S. HRG. 100-1054

HANDGUN VIOLENCE PREVENTION ACT OF 1987

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 466

A BILL TO PROVIDE FOR A WAITING PERIOD BEFORE THE SALE, DELIVERY, OR TRANSFER OF A HANDGUN

AUGUST 2, 1988

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HANDGUN VIOLENCE PREVENTION ACT OF 1987

TUESDAY, AUGUST 2, 1988

U.S. SENATE,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:45 a.m., in room SR-385, Russell Senate Office Building, Hon. Paul Simon (chairman of the subcommittee) presiding.

Also present: Senators Metzenbaum and Specter.

OPENING STATEMENT OF SENATOR SIMON

Senator SIMON. The hearing will come to order.

I regret that I have another committee meeting that I am going to have to move on to very quickly, and I am going to turn the Chair over to Senator Metzenbaum.

I want to commend Senator Metzenbaum and his leadership on this.

The hearing is to focus on the relationship between guns and the drug trade and how a waiting period would be useful for law enforcement in the fight against drugs.

I do not think there is any question we can do a better job of law enforcement in this country. We do not need to make handguns available. It probably will be pointed out by one of the witnesses that handguns include things that most people would simply consider automatic rifles, where you can fire 44 shots in 30 seconds.

There is no reason for anyone who is a hunter or a sportsman to have that kind of a weapon. But legislation that simply would delay the purchase of these lethal weapons so that law enforcement officials can check things out, seems to me to be sensible legislation.

I come from rural southern Illinois, where people hunt, where our family lives and most days we see more deer than we do people. I understand that people want to have guns. That is part of rural America, part of urban America. But I also know that Americans want to be safe, and that we are not as safe as we could be, if we just took a few prudent steps that will not take guns away from responsible people in this country.

Again, I want to commend my colleague, Senator Metzenbaum, and because of the other meeting, I am going to have to turn the Chair over to him at this point. Thank you, Senator Metzenbaum.

OPENING STATEMENT OF SENATOR METZENBAUM

Senator METZENBAUM [presiding]. Thank you very much, Senator Simon.

I consider it a privilege to have an opportunity to chair your subcommittee.

If you ask law enforcement experts what one factor all drug traffickers have in common, the answer would be guns. It is a chilling reality that the individuals importing and pushing crack and heroin on the streets of every American city are armed with expensive, high-powered, state-of-the-art firearms.

Soon the Senate will consider a bill to expand law enforcement's ability to fight drug abuse. That bill contains virtually every anti-drug provision imaginable except one. It fails to take any step to prevent violent and deadly drug pushers from obtaining ready access to sophisticated, high-powered handguns.

If this omnibus drug bill passes, federally insured student loans, federally backed mortgages, and even drivers licenses may be off limits to those who abuse drugs. So while it may be harder for drug traffickers to get mortgages or go to college or drive cars, they can still walk up to the counter in a gun shop and walk out with as many handguns as they can carry. These include high-powered, semi-automatic weapons that can fire more than 100 rounds per minute.

Today the most violent and dangerous drug traffickers are arming themselves by illegally purchasing guns from legitimate gun dealers. These illegal sales go forward because there is no provision in Federal law to permit law enforcement to determine whether a handgun purchaser is a convicted felon or an illegal alien.

If we are serious about fighting the war on drugs, we must declare war on drug traffickers. I do not advocate, nor do I support legislation to confiscate or ban handguns from law abiding citizens. Because there seems to be some confusion on that issue, I want to repeat the statement. I do not advocate, nor do I support legislation to confiscate or ban handguns from law abiding citizens.

But it is absurd for the Federal Government to stand idly by while violent and dangerous drug pushers arm themselves in federally licensed and regulated gun stores.

The drug bill reported by the House Judiciary Committee, 35 to 0, contains a provision that requires a national seven day waiting period for all handgun sales by gun dealers. When the Senate considers the drug bill, I intend to offer a similar amendment.

I am pleased about the fact that the President has publicly recognized the value of a waiting period bill. I am particularly pleased that Mr. Christianson, when he was up before us as Deputy Attorney General, indicated that he can support a waiting period bill, although he indicated that he would make it optional to make it longer than seven days, if the states wanted it. Mr. Thornberg, when he was in to see me, in connection with his confirmation, took a similar point of view.

Today we will hear from a number of distinguished police experts. I invite each of them to tell us what they believe Congress should do to break this deadly guns and drugs connection.

At this point I would like to insert in the record my prepared statement along with the prepared statement of Senator Hatch, and the text of S. 466.

[Information follows:]

U.S. Senator Howard M.
METZENBAUM
of Ohio

Committees:
Judiciary
Labor and Human Resources
Energy and Natural Resources
Select Committee on Intelligence

Chairmanships:
Subcommittee on Antitrust
Subcommittee on Labor
Subcommittee on Energy
Regulation and Conservation

OPENING STATEMENT OF SENATOR HOWARD M. METZENBAUM

HEARING ON THE RELATIONSHIP BETWEEN FIREARMS AND

DRUG TRAFFICKING AND THE IMPACT OF A WAITING PERIOD

FOR HANDGUN PURCHASES

BEFORE THE SUBCOMMITTEE ON THE CONSTITUTION

AUGUST 2, 1988

IF YOU ASKED LAW ENFORCEMENT EXPERTS WHAT ONE FACTOR ALL DRUG TRAFFICKERS HAVE IN COMMON -- THE ANSWER WOULD BE "GUNS". IT IS A CHILLING REALITY THAT THE INDIVIDUALS IMPORTING AND PUSHING CRACK AND HEROIN ON THE STREETS OF EVERY AMERICAN CITY ARE ARMED WITH EXPENSIVE, HIGH-POWERED, STATE OF THE ART FIREARMS.

SOON THE SENATE WILL CONSIDER A BILL TO EXPAND LAW ENFORCEMENT'S ABILITY TO FIGHT DRUG ABUSE. THAT BILL CONTAINS VIRTUALLY EVERY ANTI-DRUG PROVISION IMAGINABLE EXCEPT ONE: IT FAILS TO TAKE ANY STEP TO PREVENT VIOLENT AND DEADLY DRUG PUSHERS FROM OBTAINING READY ACCESS TO SOPHISTICATED, HIGH POWERED HANDGUNS.

IF THIS OMNIBUS DRUG BILL PASSES, FEDERALLY INSURED STUDENT LOANS, FEDERALLY BACKED MORTGAGES AND EVEN DRIVERS LICENSES MAY BE OFF LIMITS TO THOSE WHO ABUSE DRUGS. SO, WHILE IT MIGHT BE HARDER FOR DRUG TRAFFICKERS TO GET MORTGAGES OR GO TO COLLEGE OR DRIVE CARS, THEY CAN STILL WALK UP TO THE COUNTER IN A GUN SHOP AND WALK OUT WITH AS MANY HANDGUNS AS THEY CAN CARRY. THESE INCLUDE HIGH-POWERED, SEMI-AUTOMATIC WEAPONS THAT CAN FIRE MORE THAN 100 ROUNDS PER MINUTE.

TODAY THE MOST VIOLENT AND DANGEROUS DRUG TRAFFICKERS ARE ARMING THEMSELVES BY ILLEGALLY PURCHASING GUNS FROM LEGITIMATE GUN DEALERS. THESE ILLEGAL SALES GO FORWARD BECAUSE THERE IS NO PROVISION IN FEDERAL LAW TO PERMIT LAW ENFORCEMENT TO DETERMINE WHETHER A HANDGUN PURCHASER IS A CONVICTED FELON OR AN ILLEGAL ALIEN.

IF WE ARE SERIOUS ABOUT FIGHTING THE WAR ON DRUGS, WE MUST DECLARE WAR ON DRUG TRAFFICKERS. I DO NOT ADVOCATE NOR DO I SUPPORT LEGISLATION TO CONFISCATE OR BAN HANDGUNS FROM LAW ABIDING CITIZENS. BUT, IT IS ABSURD FOR THE FEDERAL GOVERNMENT TO STAND IDLY BY WHILE VIOLENT AND DANGEROUS DRUG PUSHERS ARM THEMSELVES IN FEDERALLY LICENSED AND REGULATED GUN STORES.

THE DRUG BILL REPORTED BY THE HOUSE JUDICIARY COMMITTEE, 35 TO 0, CONTAINS A PROVISION THAT REQUIRES A NATIONAL 7 DAY WAITING PERIOD FOR ALL HANDGUNS SALES BY GUN DEALERS. WHEN THE SENATE CONSIDERS THE DRUG BILL, I INTEND TO OFFER A SIMILAR AMENDMENT.

WE WILL HEAR TODAY FROM A NUMBER OF DISTINGUISHED POLICE EXPERTS. I INVITE EACH OF THEM TO TELL US WHAT THEY BELIEVE CONGRESS SHOULD DO TO BREAK THIS DEADLY GUNS AND DRUGS CONNECTION.

STATEMENT OF SENATOR ORRIN G. HATCH
HEARING ON THE RELATIONSHIP BETWEEN FIREARMS AND
DRUG TRAFFICKING
AUGUST 2, 1988

MR. CHAIRMAN, I WOULD LIKE TO THANK YOU FOR HOLDING THIS HEARING TODAY ON THE RELATIONSHIP BETWEEN FIREARMS AND DRUG TRAFFICKING. WE ARE CURRENTLY WORKING ON AN OMNIBUS DRUG PACKAGE, AND THE INFORMATION FROM THIS HEARING SHOULD PROVE USEFUL IN THE FORMULATION OF THAT BILL.

IT IS OBVIOUS FROM THE NATIONAL AND LOCAL NEWS THAT DRUG TRAFFICKING IS BECOMING MORE AND MORE VIOLENT AS COMPETING TRAFFICKERS BATTLE FOR EACH OTHERS TURF. THESE NEWS ACCOUNTS AND RECENT REPORTS FROM LAW ENFORCEMENT AGENCIES TELL US THAT THESE DRUG DEALERS ARE RELYING LESS AND LESS ON THE SATURDAY NIGHT SPECIALS, OVER WHICH WE HAVE PREVIOUSLY SPENT SO MUCH TIME, AND NOW PREFER HIGH POWERED, SOPHISTICATED WEAPONRY. THIS INCREASE IN FIREPOWER, IN TURN, HAS RESULTED IN MORE FATALITIES AND SERIOUS INJURIES TO POLICE, INNOCENT BYSTANDERS, AND DRUG TRAFFICKERS THEMSELVES.

TODAY WE WILL HEAR TESTIMONY FROM SEVERAL WITNESSES ON THE RELATIONSHIP BETWEEN DRUGS AND GUNS AND LEARN HOW DRUG DEALERS MOST OFTEN OBTAIN THEIR FIREARMS. I WILL BE INTERESTED IN

LEARNING THE LATEST FACTS AND FIGURES, BECAUSE I SUSPECT THAT MOST CRIMINALS OBTAIN THEIR GUNS FROM ILLEGITIMATE SOURCES. I WILL ALSO BE INTERESTED IN LEARNING HOW MANY OBTAIN THEIR WEAPONS FROM LEGITIMATE DEALERS, EITHER DIRECTLY OR INDIRECTLY.

THE WITNESSES WILL ALSO SHARE WITH US THEIR INSIGHTS ON THE EFFECTIVENESS OF THE CURRENT LAWS IN HELPING TO COMBAT THIS RELATIONSHIP BETWEEN GUNS AND DRUGS. I KNOW THAT SOME OF OUR WITNESSES WILL CALL FOR THE ENACTMENT OF SOME PIECES OF LEGISLATION THAT ARE CURRENTLY PENDING BEFORE THE CONGRESS, BUT I AM CURIOUS TO KNOW HOW THAT LEGISLATION IS GOING TO STOP THE PROBLEM IF THE DRUG TRAFFICKERS ARE OBTAINING THEIR FIREARMS EITHER ILLEGITIMATELY OR INDIRECTLY FROM DEALERS.

WITH THAT SAID, LET ME AGAIN STATE THAT I DO BELIEVE THE GROWING RELATIONSHIP BETWEEN GUNS AND DRUG TRAFFICKING IS A SERIOUS PROBLEM THAT MUST BE ADDRESSED. WE MUST LEGISLATE RESPONSIBLE SOLUTIONS THAT TRULY ATTACK THE PROBLEM WITHOUT INFRINGING ON THE SECOND AMENDMENT RIGHTS OF LAW ABIDING CITIZENS.

I APPRECIATE THIS OPPORTUNITY TO MEET WITH THESE DISTINGUISHED WITNESSES AND HOPE THAT WE WILL COME AWAY FROM TODAYS HEARING WITH A CLEARER PICTURE ON WHAT LAWS WILL OR WILL NOT WORK IN RELATION TO THIS SERIOUS PROBLEM.

II

100TH CONGRESS
1ST SESSION

S. 466

To provide for a waiting period before the sale, delivery, or transfer of a handgun.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 1987

Mr. METZENBAUM introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To provide for a waiting period before the sale, delivery, or transfer of a handgun.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Handgun Violence Prevention Act of 1987".

SEC. 2. (a) Section 922 of title 18, United States Code, is amended by adding at the end thereof the following:

"(p)(1) It shall be unlawful for any person to sell, deliver, or transfer a handgun, otherwise permitted by law, to an individual who is not licensed under section 923 unless—

"(A)(i) such transferor, before delivery of the handgun and within one day after the date the trans-

feree proposes such transfer, has sent, by registered or certified mail (return receipt requested), a copy of a sworn statement by the transferee to the chief law enforcement officer of the place of residence of the transferee notifying such officer of the proposed transaction; and

"(ii) seven days have elapsed from the date such sworn statement was sent and such transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal law or of a State or local law of the residence of the transferee; or

"(B) the transferee has presented to the transferor a certificate from the chief law enforcement officer of the place of residence of the transferee which states that the transferee requires access to a handgun because of a threat to the life of the transferee.

"(2) Nothing in this subsection shall be interpreted to require any action by a chief law enforcement officer which is not otherwise required.

"(3) The sworn statement referred to in paragraph (1) shall contain only—

"(A) an accurate description of the handgun which is the subject of the proposed transaction;

"(B) the serial number of the handgun;

"(C) the name, address, and date of birth appearing on a valid piece of the transferee's personal identification containing a photograph of the transferee and a description of the identification used;

"(D) a statement that Federal law does not prohibit the receipt of the handgun by the transferee; and

"(E) the date the sworn statement is made.

"(4) Any transferor who receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee is in violation of Federal law or of State or local law of the residence of the transferee, after a handgun has been transferred to the transferee, shall immediately communicate all information such transferor has about the transfer and the transferee to—

"(A) the chief law enforcement officer of—

"(i) the place of business of the transferor, in the case the transferor is a licensed importer, licensed manufacturer, or licensed dealer; or

"(ii) the place of residence of the transferor, in any other case; and

"(B) the chief law enforcement officer of the place of residence of the transferee.

"(5) Any transferor who receives information, not otherwise available to the public, in a report under this subsection

shall not disclose such information except incident to the proposed transaction.

"(6)(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the sworn statement of the transferee with respect to the handgun transaction for at least one year after the date the transaction is completed.

"(B) Unless the chief law enforcement officer to whom a copy of such sworn statement is sent determines that a transaction would violate Federal, State, or local law, the officer shall destroy such copy within 60 days after the date the transferee made such statement.

"(7)(A) Notwithstanding any other provision of this title—

"(i) any dealer who violates the provisions of this subsection shall be fined not more than $1,000, or imprisoned for not more than one year, or both; and

"(ii) any individual who willfully violates the provisions of this subsection shall be fined not more than $500.

"(B) The penalties provided in this paragraph shall be the only penalties imposed for a violation of this subsection.

"(8) For purposes of this subsection, 'chief law enforcement officer' means the Chief of Police, the Sheriff or an equivalent officer or the designee of any such individual.

"(9) The Secretary shall take necessary actions to assure that the provisions of this subsection are published and disseminated to dealers and to the public.".

(b) This section and the amendments made by this section shall not apply to dealers until 90 days after the date of enactment of this Act and shall not apply to individuals other than dealers, until 6 months after such date of enactment.

SEC. 3. Section 921(a) of title 18, United States Code, is amended by adding at the end thereof the following new paragraph:

"(25) The term 'handgun' means a firearm which has a short stock and is designed to be held and fired by the use of a single hand or any combination of parts from which a handgun can be assembled.".

SEC. 4. Section 924(a)(1) of title 18, United States Code, is amended by inserting section 922(p), after "section," the first place it appears.

SEC. 5. Section 927 of title 18, United States Code, is amended by—

(1) inserting "(a)" before "No"; and

(2) adding at the end thereof the following:

"(b) A provision of State law is not in direct and positive conflict with section 922(p) if such provision provides—

"(1) for a waiting period of at least 7 days before the transfer of a handgun; or

"(2) that, before a handgun transfer is completed, a law enforcement officer shall determine that the transferee is qualified under law to receive a handgun.".

Senator METZENBAUM. Our first panel is Phillip McGuire, Assistant Director, Bureau of Alcohol, Tobacco and Firearms. Please proceed.

STATEMENT OF PHILLIP McGUIRE, ASSISTANT DIRECTOR, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, WASHINGTON, DC

Mr. MCGUIRE. Thank you, Mr. Chairman. I appreciate very much the opportunity to appear before this committee to address the subject of guns, drugs and the violence associated with them.

I was interested in your remarks earlier, relative to the war on drug traffickers. Let me state to you that the Bureau of Alcohol, Tobacco and Firearms is totally committed to the war on drug traffickers, and the elimination of drug-related firearms violence.

Drugs and firearms, as you pointed out, go hand in hand. Drug dealers use semi-automatic and automatic firearms to protect their turf, to keep discipline in their ranks, to intimidate the local community, or use as barter for drugs and, unfortunately, as offensive weapons against law enforcement officers.

The drug traffickers' weapons of choice range from the AR-15 military assault rifle to the 9 millimeter semi-automatic pistol.

A small number of criminals are responsible for the bulk of major crimes in America. Studies indicate that 6 percent of criminals arrested committed 70 percent of serious crimes. One study revealed that 243 heroin addicts committed one-half million crimes over an 11-year period.

Congress, in 1984 gave law enforcement additional weapons to use against these criminals with the passage of the Armed Career Criminal Act. Sections 924(c) and 924(e) of Title 18 U.S.C. focus on the repeat offender, the very people that you were speaking of earlier.

Section 924(c) provides for mandatory imprisonment of not less than five years for a first offense and 10 years for a second offense for anyone who uses or carries a firearm during and in relation to a Federal crime of violence or drug trafficking. Section 924(e) calls for mandatory imprisonment of not less than 15 years with no parole and a discretionary fine of up to $25,000 for anyone possessing a firearm who had three previous State or Federal convictions for a violent felony or serious drug offense or both.

ATF has primary responsibility for enforcing these new laws. Shortly after passage of the act, we initiated a pilot project in three cities and later broadened the scope to encompass the national Project Achilles. The project was so named because an illegal firearm hits at the criminal's most vulnerable point. He needs the firearms to commit his crimes. In Project Achilles, ATF works with local police, prosecutors, and U.S. attorneys to identify, target, investigate, and prosecute those criminals who qualify for enhanced sentencing.

We have task forces set up in 20 of our 22 districts nationwide. To date, 177 criminals have been sentenced under the provisions of the Armed Career Criminal Act to a total of 1,966 years. The enhanced sentences are beginning to have an effect. Drug dealers are

now attempting to plead to drug charges if the accompanying firearm charges are dropped.

As the statutes become more widely applied by prosecutors and police, they will have a major impact on violent gangs, career criminals and drug dealers and their organizations.

AFT's analysis of the typical defendant in a firearm investigation shows as follows: 41.7 percent had a prior felony conviction; 21.2 percent were armed at the time they were arrested; 25.6 percent were known narcotics users. 12.5 percent were DEA Class I or Class II narcotics traffickers, the largest class identified by the Drug Enforcement Administration; 27.1 percent were other narcotics traffickers of lesser magnitude; 23.5 percent had a long history of violence.

A decade ago, police rarely encountered armed drug dealers. Today, guns have become status symbols and the tools of the drug trade. The Drug Enforcement Administration reports that during fiscal year 1987, they seized 4,964 firearms in the course of their drug investigations. And for the first half of fiscal year 1988, they have seized 2,560 firearms, which included 82 fully automatic weapons, 633 rifles, 399 shotguns, 866 handguns, and 626 semi-automatic handguns.

Local crime statistics reflect the increasing use of firearms in drug related homicides. Violent incidents involving the killing of police are also at an alarming level. In the past two years, 128 law enforcement officers have been killed in the line of duty by firearms. So far this year, 21 officers have died because of a handgun, rifle or shotgun.

This violence is directly attributable to the drug trade.

During the past few years, a new and more violent organized drug gang has invaded our communities, unfortunately. These traffickers, called Jamaican posses, pose a very real threat. ATF has been the lead Federal agency in targeting investigations of posse members and serving as a clearinghouse of intelligence for local, State and other Federal agencies. The Jamaican posses stand out because of their penchant for violence.

ATF has identified a minimum of 40 posses with over 10,000 members operating in at least 36 cities coast to coast. We estimate that since 1984, the posses have been responsible for more than 1,000 drug-related homicides in carving out new drug markets or taking over old ones.

We have aggressively joined with other law enforcement agencies to confront this threat by forming 23 task forces around the country. ATF is monitoring Jamaican posse activity on a national basis. As we develop intelligence on these posses and identify areas experiencing severe problems, we will reprogram manpower and resources towards those individuals.

The posses have demonstrated a total disregard for human life. They believe that if they can intimidate, they can operate openly. To demonstrate toughness, the posses like to do their killing before a crowd or by violent methods, as the following incidents show.

Vinton "Geese" Ashmont was arrested by Boston police on February 7 for the murder of Anthony Bennett in a wild shootout at a Cambridge reggae night club. About 100 people were in the club

when Ashmont entered and fired his semi-automatic at Bennett, who was seated at a table.

Delroy Edwards, alleged head of the Rankers posse, was arrested March 10 in New York on a state charge of murder and attempted murder for killing a man at a local disco who was crowding his space on the local dance floor.

On June 24, 1986, New York City police officer Scott Gadell was shot in the head at point blank range by Erroll Campbell, a reputed member of the Shower posse. Scott was killed while reloading his gun during a shootout with Campbell in Queens. Campbell was armed with a 14 shot, 9 millimeter, semi-automatic pistol.

The result of our tracing of guns recovered at crime scenes in the District of Columbia has revealed that 15 percent came from Maryland and 25 percent came from Virginia. We have identified Florida, Texas, Georgia, and Ohio as major sources for illegal firearms.

Law enforcement agencies are joining together to attack the drug dealers and to reclaim our streets. We are convinced that the laws and resources are in place to attack the problem. What is needed is a renewed commitment by the American public and their elected officials to support law enforcement in this war on drugs.

That concludes my statement, Senator Metzenbaum. I will be glad to respond to any questions you might have.

Senator METZENBAUM. Thank you very much, Mr. McGuire.

I must tell you that I know such things are happening, but when I hear you speak about the specifics, it really shocks me beyond compare.

Mr. McGuire, first I want to commend you upon your statement and upon your support for trying to deal with this problem. I would ask you to hold up an Uzi if you would, please, and ask you if that is one of the weapons you are finding on narcotics traffickers that you arrest?

Mr. MCGUIRE. Yes, sir, Senator. As a matter of fact, all the weapons that you see on this table are characteristic and have, in fact, been seized by ATF, principally from narcotics traffickers.

This Uzi is, by definition, a handgun, semi-automatic variety, perfectly legal in the hands of any of the over 250,000 firearms dealers in the United States, and legal to be purchased by any law-abiding citizen of the United States. It shoots semi-automatic, however it will fire at the rate of 100 rounds a minute.

Senator METZENBAUM. So in other words, that gun can kill literally dozens of people in under one minute?

Mr. MCGUIRE. It is certainly capable of that, yes, sir.

Senator METZENBAUM. Can a drug dealer walk into an ordinary pawn shop or a sporting goods store and buy that weapon?

Mr. MCGUIRE. Unfortunately, that is the case, Senator Metzenbaum. He would have to falsify existing forms and regulations, but certainly could do that.

Senator METZENBAUM. Could a drug dealer with dozens of convictions lie to the gun dealer and walk out with that gun minutes later?

Mr. MCGUIRE. They frequently do.

Senator METZENBAUM. If there is no state or local waiting period, would a gun dealer have any way to know whether someone want-

ing to purchase an Uzi or any of the other guns on that table is a felon or illegal alien?

Mr. McGUIRE. No, sir. Unfortunately, we are dependent on somewhat of an honor system on the part of the purchaser.

Senator METZENBAUM. Each of the guns on that table could be purchased by one of these Jamaican posse members or any other drug dealer. They could walk in, buy the gun, use false identification, and walk out with the gun, is that correct?

Mr. McGUIRE. That is correct with the exception with two of the weapons in their current configuration. As purchased, they were semi-automatic and legal. Unfortunately, they were designed and manufactured in such a fashion that they could be converted in less than a minute, and two of those weapons had been converted to fire fully automatic at the time that we seized them.

Senator METZENBAUM. If there were a national 7-day waiting period for handgun purchases, how would drug traffickers get their handguns?

Mr. McGUIRE. First of all, it would make it more difficult for them to get them from licensed dealers. There would still be a black market for these weapons, I feel, but in the event of an implementation of a 7-day waiting period, that too would assist us in impacting the illegal firearms traffickers who perhaps do not have a criminal record and are not otherwise prohibited from purchasing weapons, but purchase large quantities from licensed firearms dealers and then, in turn, sell them illegally to narcotics traffickers.

But a 7-day waiting period could be of some assistance in that regard, also.

Senator METZENBAUM. You testified that the Bureau of Alcohol, Tobacco and Firearms is totally committed to the war on drug traffickers and to the elimination of drug related firearms violence. Would a 7-day waiting period for handgun purchases help in this war on drug traffickers and drug related firearms violence?

Mr. McGUIRE. Senator, I think that our attorney general has made a statement in support of the 7-day waiting period with the caveat that states be given the authority to promulgate and implement regulations at the state level to their liking. I would like to associate myself with that statement.

Senator METZENBAUM. Was there not also the provision that the states could do it, provided that it had terms in excess of 7 days? It seems to me that that is what I had read, and that was my understanding of what Mr. Christianson and Mr. Thornberg had said.

Mr. McGUIRE. I must admit that I heard the statements a few minutes ago and that was the first time that I was aware of that, yes, sir.

Senator METZENBAUM. One of the arguments advanced against the national waiting period is that it is a matter more appropriately left to the states. However, I conclude from your testimony that drug traffickers are not purchasing their weapons in states with waiting periods. Instead, they are buying guns where there is no wait and then transporting the guns interstate. Is that a fair conclusion?

Mr. McGUIRE. Yes, sir, I think it is.

Senator METZENBAUM. So until we enact a national waiting period, drug traffickers will be able to arm themselves through quick and easy over the counter sales from gun stores, is that correct?

Mr. MCGUIRE. Yes, sir.

Senator METZENBAUM. A spokesman for the NRA is quoted in the USA Today as claiming that a waiting period law would swamp police with paperwork. I might say, parenthetically, that the police themselves will be here to testify and indicate that they support this waiting period bill. Would you care to comment on that?

Mr. MCGUIRE. I think that the Police Chiefs of America are in a better position to speak for their workload and what they are willing to do.

I might add in my conversation with police chiefs all around the country, those that I have spoken with, would certainly welcome the challenge.

Senator METZENBAUM. They would welcome the challenge?

Mr. MCGUIRE. Yes, sir.

Senator METZENBAUM. And they support the bill? They support a waiting period?

Mr. MCGUIRE. Yes, sir.

Senator METZENBAUM. Thank you, Mr. McGuire. Senator Specter.

Senator SPECTER. Yes, thank you very much, Mr. Chairman.

Mr. McGuire, when Senator Metzenbaum has asked you about the issue of falsification and the obtaining of the weapons through deception and a ruse, what provisions would be applicable to stop obtaining firearms under those circumstances?

Mr. MCGUIRE. I think that ideally, Senator Specter, that if in fact a waiting bill was passed, that that would give police or Federal authorities the opportunity to look into the identity, reputation and record of the individual attempting to acquire the firearm.

Senator SPECTER. Would there not have to be something more than simply a name and an address used? If that were a false name and address and the person, in fact, was someone else who had a bad criminal record, how would that be determined without some supplementary identification status, such as fingerprinting?

Mr. MCGUIRE. I think that fingerprinting would probably be the ultimate test, but I think there are some things less than a fingerprint, for instance, Social Security numbers, drivers license numbers and things of that nature, that would be of some assistance.

I can't help but believe that simply the psychological impact of knowing that if they gave false information and signed a form in violation of Federal law, and they were going to have to return to that dealer 7 days later, just the psychological impact of not knowing what was waiting for them when they came back to acquire the gun, if in fact they had provided false information, would have a deterrent effect on criminals attempting to buy guns under those circumstances.

Senator SPECTER. The drivers license and the Social Security number would certainly be of assistance, but those items are not too hard to falsify. When you come right down to making a factual determination about who is making the representation, short of a

fingerprint, you do not really have a really conclusive method for making that determination.

Mr. MCGUIRE. I would have to agree with that.

Senator SPECTER. I was interested in your statement about the utility of the Armed Career Criminal bill, which I had offered back in 1984, providing for Federal involvement on street crime, with a mandatory sentence of 15 years to life for any career criminal to be caught in possession of a firearm. We had defined it initially, in 1984, as someone who had been convicted of three or more robberies or burglaries. Then in 1986, we had an amendment which expanded that to drug dealers.

Your unit, Alcohol, Tobacco and Firearms, has been using this statute on an increased basis, and I understand that in St. Louis, there have been some very, very good results with it. I would be interested to know what plans you have for expanding the use of the Armed Career Criminal bill for the fight against those who misuse firearms?

Mr. MCGUIRE. In several areas, Senator. First of all, St. Louis was one of three pilot cities where we first implemented our task forces on a pilot basis. We found it to be very useful and a very effective tool against narcotics traffickers and violent criminals.

We have since expanded that to 26 task forces nationwide. We are doing training at both the State, local, and Federal level in the utilization of 924(c) and 924(e). We hold that up as perhaps one of the very best tools against the narcotics trafficker because many of them would not be seen with narcotics or in possession of narcotics, but they are careless because of the necessity for their own protection, and they will carry firearms. It gives us an ample tool to use against them.

Senator SPECTER. What do you do, in terms of detection of those who are picked up and charged with the Armed Career Criminal Act? In Philadelphia, for example, where we are trying to increase the use of the act, the Federal prisoners are taken to a local detection center. The local detention center is under a court order. No more detainees may be admitted. Is that a problem that you face in many sections of the country?

Mr. MCGUIRE. I think that is a problem universal to Federal law enforcement throughout the country.

Senator SPECTER. What are you doing about it?

Mr. MCGUIRE. As you well know, we make recommendations to the magistrate based on the record and reputation of the individual arrested. Beyond that, it is essentially out of our hands.

Senator SPECTER. I bring up that issue because there is an issue of detention and there is also an issue of sentencing. I realize that it is beyond your power to deal with those matters, but we have a problem of 200,000 to 400,000 career criminals at large today in the United States. We are finally getting some statutes to deal with the arrest and apprehension of those career criminals.

But a big part of the problem exists with respect to detention, awaiting trial, and then sentencing after trial. I introduced legislation about 5 years ago which would allocate 1 percent of the Federal budget over a 10-year period, about $10 billion a year for a 10-year period, for $100 billion on a comprehensive approach which

would encompass additional investigators, calendar control, some education programs on drugs.

This goes back 5 years ago, but very heavy emphasis on the construction of 200,000 additional jail cells. Until we have the place to put the career criminals, both on detention awaiting trial, and on incarceration after conviction, we are really up against an insurmountable problem. We need a vast amount of public education and a much higher priority on those directions if we are really to deal with the problems of guns in America and those who misuse guns.

I would note you nodding in agreement.

Mr. MCGUIRE. I would agree.

Senator SPECTER. It is easy to agree with that, is it not?

Thank you very much, Mr. McGuire. Thank you, Mr. Chairman.

Senator METZENBAUM. Thank you, Senator Specter. We are very happy to have you with us here this morning. Thank you, Mr. McGuire. We intend to be working further with you.

[The prepared statement of Phillip McGuire follows:]

DEPARTMENT OF THE TREASURY

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Statement of Phillip C. McGuire

Associate Director

Before Senate Judiciary Committee

August 2, 1988

It is a pleasure to appear before this committee to address you on the subject of guns, drugs and the violence associated with them. This committee is well aware of the increasing calls for a drug free work environment, zero tolerance and stronger prosecution and sentencing of drug dealers and traffickers. The growing drug problem is creating another problem--the criminal arming of America. If you are in the narcotics business then you need firearms.

Let me state that the Bureau of Alcohol, Tobacco and Firearms is totally committed to the war on drug traffickers, and to the elimination of drug-related firearms violence. Drugs are a growing epidemic that is threatening our families, our children and our way of life. They must be stamped out. Drugs and firearms go hand-in-hand. Drug dealers use semi-automatic and automatic firearms to protect their turf, to keep discipline in their ranks, to intimidate the local community and for use as barter for drugs. The availability of firearms is tied to the growing drug trade and today's criminal is armed to kill. His weapons of choice range from the AR-15 military assault rifle to the 9-mm semiautomatic pistol.

A small number of criminals are responsible for the bulk of major crimes committed in America. Studies indicate that 6 percent of the criminals arrested committed 70 percent of the serious crimes. One study revealed that 243 heroin

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addicts committed 1/2 million crimes over an 11-year period. It is the repeat offender who is responsible for the increase in murders, robberies and aggravated assaults. With this in mind, Congress in 1984 gave law enforcement additional weapons to use against criminals with the passage of the Armed Career Criminal Act. Sections 924 (c) and 924 (e) of Title 18 USC focus on the repeat offender and are the means to stop the criminal.

Section 924 (c) provides for mandatory imprisonment of not less than 5 years for a first offense and 10 years for a second offense for anyone who uses or carries a firearm during and in relation to a federal crime of violence or drug trafficking. Section 924 (e) calls for mandatory imprisonment of not less than 15 years with no parole and a discretionary fine up to $25,000 for anyone possessing a firearm who had 3 previous state or federal convictions for a violent felony or serious drug offense or both.

ATF has primary responsibility for enforcing these new laws. Shortly after passage of the act, we initiated a pilot project in 3 cities and later broadened the scope to encompass the national "Project Achilles"; the project so named because an illegal firearm hits at the criminal's most vulnerable point. He needs the firearm to commit his crimes. In "Project Achilles," as in other similar task forces, ATF works with

local police, prosecutors and U.S. attorneys to identify, investigate and prosecute those criminals who qualify for enhanced sentencing. We have task forces set up in 20 of our 22 districts. To date, 177 criminals have been sentenced under the provisions of the Armed Career Criminal Act to a total of 1,906 years. The enhanced sentences are beginning to have an effect. Drug dealers are now attempting to plead to drug charges if the accompanying firearms charges are dropped. These laws are the foundation for law enforcement agencies to work together to put the career criminal behind bars. As the statutes become more widely applied by prosecutors and police, they will have a major impact on violent gangs, career criminals and drug dealers and their organizations.

Mounting evidence points to the link between firearms and violence. Each year between 1973 and 1985, about 4 in every 10 violent crime victimizations by strangers involved an armed offender. The Bureau of Justice Statistics released a report in 1986 that stated that, "Armed offenders were responsible for 24 million victimizations during the period 1973-82, accounting for 37 percent of all violent victimizations." In 35 percent of these victimizations, the armed criminal had a gun.

It is estimated that half of all robberies, a third of all assaults and a fourth of all rapes or attempted rapes were

committed by armed criminals. ATF's analysis of the typical defendant in a firearms investigation shows the following profile:

41.7 percent had a prior felony conviction

21.2 percent were armed at arrest

25.6 percent were known narcotics users

12.5 percent were DEA Class I or Class II traffickers

27.1 percent were other narcotics traffickers

23.5 percent had a history of violence

A decade ago, police rarely encountered armed drug dealers. Today, however, guns have become status symbols and tools of the trade for drug dealers. The Drug Enforcement Administration reports that during fiscal year 87, they seized 4,964 firearms in the course of their investigations and for the first half of fiscal year 88, they seized 2,556 firearms which included 82 automatics, 633 rifles, 399 shotguns, 816 handguns and 626 semi-automatic handguns. The proliferation of high powered guns during the 1980's is an ever increasing problem for law enforcement. Local crime statistics reflect the increasing use of firearms in drug-related murders and homicides. Violent incidents involving the killing of police are also at an alarming level because of the drug market. In the past two years, 128 law enforcement officers have been killed in the line of duty by firearms. So far, this year, 21 officers have died because of a handgun, rifle or shotgun. This

violence is directly attributable to the drug trade and will continue as long as drug dealers and traffickers can make hugh profits from their illegal activities.

The following incidents bring home the connection between drugs and firearms:

--Seven men were arrested on March 7 in the District of Columbia when ATF agents and Metropolitan police raided a "safe" house used for the manufacture of crack. Seized were automatic and semiautomatic weapons and narcotics worth $975,000 dollars.

--On April 12, ten people were arrested and 47 weapons seized during raids in Josephine County, Oregon in connection with a methamphetamine lab.

--On May 21, a Florida woman was arrested for trying to trade three MAC-11 submachine guns and a sawed off shotgun to undercover agents for half a kilo of cocaine.

During the past few years, a new and more violent organized drug gang has invaded our communities. These traffickers--called Jamaican posses--pose a very real threat to our country. ATF has been the lead federal agency in targeting investigations of posse members and acting as a clearinghouse of intelligence for local, state and federal agencies. The Jamaican posses stand out because of their penchant for violence.

ATF has identified a minimum of 40 posses with over 10,000 members operating in at least 36 cities from coast to coast. We estimate that since 1984, the posses have been responsible for more than 1,000 drug-related homicides in carving out new drug markets or taking over old ones.

We have aggressively joined with other law enforcement agencies to confront this threat by forming 23 task forces around the country. ATF is monitoring Jamaican posse activity on a national basis. As we develop intelligence on the posses and identify areas experiencing severe problems, we will reprogram manpower and resources such as the recent redeployment of 33 agents in the Washington metropolitan area.

The posses have demonstrated a total disregard for human life. They believe that if they can intimidate they can operate openly. To demonstrate toughness, the posses like to do their killing before a crowd or by violent methods as the following incidents show:

--Vinton "Geese" Ashmont was arrested by Boston police on February 7 for the murder of Anthony Bennett in a wild shootout at a Cambridge reggae night club. About 100 people were in the club when Ashmont entered and fired his semiautomatic at Bennett who was seated at a table.

--On February 22, DC Metropolitan police arrived at an apartment to find one women killed and another wounded. This typical posse drug related execution was witnessed by 4 children under age 3.

--Delroy Edwards, alleged head of the Rankers posse, was arrested March 10 in New York on a state charge of murder and attempted murder for killing a man at a local disco who was "crowding" his space on the dance floor.

--On June 24, 1986, New York City police officer Scott Gadell was shot in the head at point blank range by Erroll Campbell, a reputed member of the Shower posse. Scott was killed while reloading his gun during a shootout with Campbell in Queens. Campbell was armed with a 14 shot, 9 mm, semiautomatic pistol.

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Drug dealers acquire their firearms in various ways. More often than not they are acquiring their arsenals through otherwise legal avenues. The results of our tracing of guns recovered at crime scenes in the District of Columbia revealed that 15 percent came from Maryland and 35 percent from Virginia. We have identified through our investigations that Florida, Texas, Georgia, Virginia and Ohio are major sources for illegal firarms.

On June 8, seven persons were arrested by ATF agents after five semiautomatic firearms were purchased from a Virginia gun store. The seven were arrested at the District of Columbia/Maryland state line after a high speed chase. In April, ATF agents arrested four Brooklyn men for illegally purchasing 106 handguns in Florida and delivering them to New York for alleged use by drug dealers in the city.

Violent crime is a fact of American life today. Heavily armed drug dealers have taken over parts of our neighborhoods, with residents afraid to leave their homes and apartments at night. Stopping the illegal flow of firearms into criminal hands has moved to the forefront in the minds of the American people.

Law enforcement agencies are joining together to attack the drug dealers and reclaim our streets. We are convinced that that the laws and resources are in place to attack the problem.

What is needed is a renewed commitment by the American public and their elected officials to support law enforcement in this war on drugs.

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Senator METZENBAUM. Our next panel consists of Gerard Lynch, executive director of the Middle Atlantic Great Lakes Organized Crime Law Enforcement Network and Captain Francis Friel, Director of the Organized Crime Intelligence Unit, Philadelphia Police Department, Philadelphia.

Mr. Lynch, Mr. Friel, we have a 5-minute rule for testimony. We do not use it most of the time with respect to Government witnesses, but I hope you can confine yourself to that period, if possible.

Mr. Lynch, we are happy to hear from you, sir.

STATEMENT OF A PANEL CONSISTING OF GERARD LYNCH, EXECUTIVE DIRECTOR, MIDDLE ATLANTIC GREAT LAKES ORGANIZED CRIME LAW ENFORCEMENT NETWORK, MALVERN, PA; AND CAPTAIN FRANCIS FRIEL, DIRECTOR, ORGANIZED CRIME INTELLIGENCE UNIT, PHILADELPHIA POLICE DEPARTMENT, PHILADELPHIA, PA

STATEMENT OF GERARD LYNCH

Mr. LYNCH. Thank you, Mr. Chairman and committee members. It is indeed both a pleasure and a privilege to have been invited to present this testimony before this committee.

As executive director of the Middle Atlantic Great Lakes Organized Crime Law Enforcement Network, I can assure you that our organization has been concentrating on the development, role, and increasingly violent nature of organized crime networks.

By way of introduction, MAGLOCLEN is one of seven regional information sharing systems that were created through congressional action to provide regional criminal information exchange and other related support services to State and local law enforcement agencies in all 50 States.

The U.S. Department of Justice set guidelines for the projects which would allow State, local, and Federal agencies to identify, target, and remove criminal conspiracies and activities which span several jurisdictions.

MAGLOCLEN has, over the past 2 years, embarked upon a more comprehensive course of action which concentrated its efforts on gathering information, pinpointing trends and evaluating criminal activities on traditional and non-traditional emerging organized crime groups. During this time, two specific areas of importance became apparent. The first being the increased involvement of these groups in illegal drug trafficking and second, the increased use of violence to perpetuate and enhance their enterprises.

In May 1988, MAGLOCLEN sponsored a conference in Downingtown, Pennsylvania. Some 400 professional representing Federal, State and local law enforcement agencies discussed both the traditional and the non-traditional organized crime groups. During the conference, the attendees raised concern as to the increased use of violence and the sophisticated weaponry that these groups were using.

In addition, speakers from Federal and State agencies reported how effective the RICO statute has been against the La Cosa Nostra.

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Long noticed as one of the foremost criminal enterprises in the United States, the La Cosa Nostra, has continuously fallen prey to the sharp teeth RICO. Countless LCN families in Cleveland, Kansas City, and New York City have fallen into disorganization as a result of numerous RICO prosecutions.

However, current legislation ignores one fact concerning criminal organizations. That is their use of weapons in achieving their objectives. Just as these criminal groups perpetrate such crimes as extortion, bribery, and arson in their day to day activities, so do they utilize a wide array of weapons. During 1987, there were roughly two dozen killings attributed to organized crime in the Borough of Brooklyn, city of New York.

In Philadelphia, 14 murders or attempted murders have occurred, allegedly directed by Nicky Scarfo in his attempt to control LCN activities in the Philadelphia, south Jersey area. Other criminal groups are even more prone to violence and less cautious in their use of weapons.

In cooperation with the Drug Enforcement Administration, MAGLOCLEN conducted an in-depth look at the increasing threat of cocaine upon our society. As part of this national survey, two groups were evaluated and both have shown a propensity for their indiscriminate use of violence. The first and most dominant drug group were the Colombian Cocaine Cartels. Through research we were able to determine the increased use of violence used to protect their drug empire.

Federal agencies such as the Drug Enforcement Administration and the Federal Bureau of Investigation were describing violence unequalled by any criminal group to date. Uzis, AK–47's, and MAC–10's began appearing regularly. Colombian related homicides and shootings increased daily. Our member agencies have reported numerous incidents where weapons have been purchased either legally or illegally in Florida and used in homicides within the MAGLOCLEN region, specifically in the northern metropolitan areas.

The other significant organized crime group examined were the Jamaicans. In March of 1987, the Philadelphia Police Department, in conjunction with the Pennsylvania State Police, asked for MAGLOCLEN's assistance in what appeared to be a Jamaican shooting that lead to the death of a Jamaican. Knowing that many law enforcement agencies in New York City and Baltimore, Maryland, had similar violence in their communities, we tried to get a mini-conference together between the agencies from the three cities to discuss this matter.

However, when word of this conference spread, we had information from Rochester, New York; Toronto, Canada; Washington, D.C.; Boston, Massachusetts; Hartford, Connecticut; Miami, Florida; and Federal agencies such as ATF and INS, who expressed a keen interest in attending this conference.

At this gathering the theme of the Jamaican organized criminals becoming more involved in the cocaine trade and the use of violence with sophisticated weapons was emphasized. Over 500 Jamaican related deaths could be attributed to the Jamaican drug trade at this particular conference.

Another conference was held by ATF and at this conference, in Miami, Florida, experts were indicating that the violence was

spreading to cities such as Dallas, Houston, Denver, Los Angeles, and Kansas City.

In June of 1988, just a few months ago, MAGLOCLEN cosponsored a major conference with ATF in Baltimore's Inner Harbor, to discuss the Jamaican organized crime problem. Over 600 Federal, State and local law enforcement professionals, including attendees from Great Britain, Canada, and Jamaica spent 4 full days discussing the violence related activities that were occurring all over the country.

In recent months, we have had the fifth largest city, Philadelphia, witnessing separate incidents including the tragic death of one 5-year-old child and a paralysis of a 6-year-old as a result of drug traffic wars.

MAGLOCLEN and its members have learned that violence, guns and drugs were not monopolized by these groups. In our increasing desire to look at the non-traditional area, we have begun to gather information on Asian organized crime groups. In 1987, in New York City, experts from the United States and Canada gave detailed accounts on how Asian organized crime groups maintained a stranglehold on victims and intimidated innocent businessmen by displaying high-powered weapons. They, too, are involved in the drug trade and use weapons to make sure that drug trade is successful.

Outlaw motorcycle gangs also were using high-powered weapons to carry on their drug trade. You will recall that there is a gang in California called the Crips and the Bloods. They have been using weapons indiscriminately, riding by locations and shooting at locations where innocent individuals were, in fact, shot.

These Crips and Bloods, who originated in California, are now appearing in the East Coast, in Columbus, Ohio; Canton, Ohio; Philadelphia, Pennsylvania; central Pennsylvania; and they are working their way to New York City and Washington, D.C.

Mr. Chairman, and Senator Spector, we appreciate this opportunity to address this committee and to help strengthen the sanctions which already exist against crime in our society.

MAGLOCLEN would also like to thank you for your generous and continued support of its efforts in combating organized crime, as well as this opportunity to address this committee.

Senator METZENBAUM. Senator Specter is indicating he has to go to the floor, and he wants to make a brief statement. I will hold my questions.

Senator SPECTER. Thank you very much, Mr. Chairman.

The Fair Housing Civil Rights Bill is on the floor. It has been called up actually 10 minutes ago, and I am one of the co-sponsors, so I have to be on the floor and will not be able to stay for any more of the hearing at this time. But I will be following the testimony very closely.

I want to thank you, especially, Captain Friel of the Philadelphia Police Department, for coming to the hearings today. I have read your statement, the problem of drugs and gang related killings in the city of Philadelphia is an overwhelming problem. There is a major effort being undertaken at this moment to try to get some extra Federal assistance on that issue.

In 1986, the Congress directed, in committee language, the Justice Department to set up a special task force for the city of Philadelphia with supplementary personnel, four additional, U.S. attorneys, four additional FBI agents, four additional DEA agents, and four additional people from Alcohol, Tobacco and Firearms with supporting personnel. And recently, when the confirmation hearings were up on Mr. Christianson and Mr. Keating, the department has paid a little more attention to that request.

I have been working with Police Commissioner Williams, I talked to him earlier this morning. I think we are very close to getting an additional task force on drugs to be of assistance in Philadelphia to deal with the kinds of problems which you have articulated in your statement.

As I say, I wish I could stay for the balance of the hearing, but I cannot because I have to be on the floor, but will be watching the testimony very carefully.

Thank you very much.

Senator METZENBAUM. Thank you, Senator Specter.

Mr. Lynch, as I understand it, you were responsible for monitoring and investigating organized crime trends throughout the Mid-Atlantic and Great Lakes regions, is that correct?

Mr. LYNCH. That is correct, Senator.

Senator METZENBAUM. Let me ask you, do you agree with Mr. McGuire, that drug traffickers are arming themselves by purchasing guns in states without waiting periods and transporting those guns to states with waiting periods?

Mr. LYNCH. Yes, Senator.

Senator METZENBAUM. Would passage of a national waiting period bill make it easier for us to fight and win the war on drugs?

Mr. LYNCH. I think it would, Senator, because we have a way of looking at some of the intelligence that we, in the law enforcement field, are able to generate that would not normally be present. We would have the time to look at that and make an evaluation.

Senator METZENBAUM. I appreciate your support and appreciate your being with us.

[The prepared statement of Gerard Lynch follows:]

MAGLOCLEN
MIDDLE ATLANTIC-GREAT LAKES
ORGANIZED CRIME LAW ENFORCEMENT NETWORK

TESTIMONY TO BE PRESENTED BEFORE THE COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON THE CONSTITUTION, U.S. SENATE
TUESDAY, AUGUST 2, 1988

Prepared by GERARD P. LYNCH, ESQ.
Executive Director of the Middle Atlantic - Great Lakes
Organized Crime Law Enforcement Network (MAGLOCLEN)

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Mr. Chairman and Committee Members:

It is indeed both a pleasure and a privilege to have been invited to present this written statement to the committee. As Executive Director of the Middle Atlantic-Great Lakes Organized Crime Law Enforcement Network, (hereinafter referred to as MAGLOCLEN), I can assure you that our organization has been concentrating on the development, role and increasingly violent nature of Organized Crime networks in the states of Michigan, Indiana, Ohio, Pennsylvania, New York, New Jersey, Delaware, Maryland and the District of Columbia as well as the provinces of Quebec and Ontario, Canada.

By way of introduction, MAGLOCLEN is one of seven (7) Regional Information Sharing Systems (RISS) that were created through Congressional action to provide regional criminal information exchange and other related support services to state and local law enforcement agencies located in all fifty states.

The US Justice Department set guidelines for the projects which would allow state, local, and federal agencies to identify, target and remove criminal conspiracies and activities which span several jurisdictions.

In addition, two main objectives were listed:

1. To encourage and facilitate the rapid exchange and sharing of information pertaining to known or suspected criminals or criminal activity among federal, state, and local law enforcement agencies.

2. To enhance coordination/communication among those agencies in pursuit of criminal conspiracies determined to be interjurisdictional in nature.

In addition to MAGLOCLEN, the six other RISS projects involved in these very important objectives are listed as follows:

1. The original project covering the southern states is known as the Regional Organized Crime Information Center (ROCIC).

2. The Rocky Mountain Information Network (RMIN) includes the Rocky Mountain states.

3. The Western States Information Network (WSIN) encompasses the western states including Alaska and Hawaii.

4. The New England State Police Information Network (NESPIN) covers the New England states.

5. The Mid-States Organized Crime Information Network (MOCIC) incorporates the central states.

6. LEVITICUS, which focuses on coal, oil, and gas frauds accommodates states that transcend the boundaries of several projects.

MAGLOCLEN and the other RISS projects are governed by an Executive or Policy Board which sets policies to govern the projects' activities. Geographic and regional differences are considered when formulating policy for each individual and unique project. The Executive or Policy Board consists of seasoned law enforcement individuals with a unique expertise in inter-jurisdictional Organized Crime investigations.

MAGLOCLEN has, over the past two years, embarked upon a more comprehensive course of action which concentrated its efforts on gathering information, pinpointing trends and evaluating criminal activities on traditional and non-traditional emerging organized crime groups. During this time, two specific areas of importance became apparent. The first being the increased involvement of the groups in illegal drug trafficking and secondly, the increased use of violence to perpetuate and enhance their enterprises.

In May of 1988, MAGLOCLEN sponsored a conference in Downingtown, Pennsylvania. Some 400 professionals representing federal, state and local law enforcement agencies discussed both traditional and non-traditional organized crime groups. During the conference, the attendess raised concern as to the increased use of violence and sophisticated weaponry that these groups are using. In addition, speakers from federal and state agencies reported how effective the RICO statute has been against the La Cosa Nostra. Because of its role, MAGLOCLEN is in a unique position to witness both the effect of the current RICO statutes on traditional and non-traditional organized criminal organizations and the increased use of violence by those organizations.

Long noticed as one of the foremost criminal enterprises in the United States, the La Cosa Nostra has continuously fallen prey to the sharp teeth of RICO. Countless LCN families in Cleveland, Kansas City and New York City and specifically the Colombo, Lucchese and Genovese families have fallen into disorganization as a result of numerous RICO prosecutions.

Current legislation ignores one fact concerning criminal organizations, that is, their use of weapons in achieving their objectives. Just as these criminal groups perpetrate such crimes as extortion, bribery, and arson in their day to day activities, so do they utilize a wide array of weapons. During 1987 there were roughly two dozen killings attributed to organized crime in the Borough of Brooklyn alone. In Philadelphia, fourteen murders or attempted murders have occurred, allegedly directed by Nicodemo Scarfo in his attempt to control LCN activities in the Philadelphia, South Jersey area, since 1979. Other criminal groups are even more prone to violence and less cautious in their use of weapons.

In cooperation with the Drug Enforcement Administration, MAGLOCLEN conducted an indepth look at the increasing threat of cocaine upon our society. As part of this national survey, two groups were evaluated and both have shown a propensity for their indescriminate use of violence. The first and the most dominant drug group was the Colombian Cocaine Cartels. Through research we were able to determine the increased use of violence used to protect their drug empire. Federal agencies such as the Drug Enforcement Administration and the Federal Bureau of Investigation were describing violence unequalled by any criminal group to date. One would expect to recover weapons such as these in a war between nations. Uzis, AK-47's, and MAC-10's began appearing regularly. Colombian related homicides and shootings increased daily. Our member agencies have reported numerous incidents where weapons have been purchased either legally or illegally in Florida and used in homicides within the MAGLOCLEN region, specifically the northern metropolitan areas.

The other significant organized crime group examined was Jamaicans. In March of 1987, the Philadelphia (PA) Police Department in conjunction with the Pennsylvania State Police, asked for MAGLOCLEN's assistance in what appeared to be a Jamaican shooting that lead to the death of a Jamaican. Knowing that many law enforcement officers in New York City and Baltimore, Maryland had similar violence in their Jamaican community, we attempted to sponsor a mini-conference between these two agencies to share information on Jamaican illegal drug activities and violence. Law enforcement personnel from Rochester, Toronto, Washington, D.C., Boston, Hartfort, Miami, the Bureau of Alcohol, Tobacco and Firearms, and the US Immigration and Naturalization Service requested permission to attend this conference. At this gathering, the theme of Jamaican organized criminals becoming more involved in the cocaine trade and the use of violence with sophisticated weapons was emphasized. Over 500 Jamaican related deaths can be attributed at this time. Another conference sponsored by the Bureau of Alcohol, Tobacco and Firearms was held in Miami, Florida, where speakers portrayed the Jamaican activity and violence occurring in such cities as Dallas, Houston, Denver, Los Angeles, and Kansas City.

In June of 1988, MAGLOCLEN cosponsored a conference with ATF in the Baltimore Inner Harbor to discuss the Jamaican organized crime problem. Over 600 federal, state, and local law enforcement professionals including attendees from Great Britain, Canada, and Jamaica spent four full days discussing violence related activities from all over the country. Less than a year after the first conference, the Jamaican related death toll almost doubled. The seizures of weapons produced an arsenal that many military units would envy, and the shooting of innocent civilians became common. Stories began appearing concerning machine gun shootings in parks in New Jersey, inside discos in New York City, and in school yards across the nation, resulting in innocent civilians being wounded or killed.

In recent weeks the nation's fifth largest city, Philadelphia, PA, has sadly witnessed in separate incidents the tragic death of one five year old child and the paralysis of a six year old as a result of drug turf wars. Fifty-two drug-related murders have been committed in Philadelphia this year with July being the highest single month. In angry response to such killings, community groups are espousing vigilante action to protect their neighborhoods. In order to maintain an image of effectiveness and avoid the anarchy that accompanies such action police need an additional tool to prosecute these groups. The perpetrators of these murders are often members of organizations which fall within the scope of RICO legislation. Their decision to utilize weapons should increase their culpability under these laws.

MAGLOCLEN and its members have learned that violence, guns, and drugs were not monopolized by these three groups. In our increasing desire to look at the non-traditional area, we have begun to gather information on Asian organized crime groups. In 1987 in New York City, experts from the United States and Canada gave detailed accounts on how Asian organized crime groups maintained a stranglehold on victims and intimidated innocent businessmen by displaying high-powered weapons. They too, are involved in the drug trade, and in protecting that trade they use weapons indiscriminately, resulting in more and more deaths of innocent bystanders.

Outlaw motorcycle gangs have also started to use sophisticated weaponry as evidenced by a recent shooting. This occurred during the lunch hour on a busy Philadelphia street between a biker group and members of an LCN family. I am sure all of us can recall "West Side Story" and the depiction of street gangs as they existed in the fifties and sixties. The weapons of choice included switchblade knives, chains and the occasional homemade zip gun. Now however street gangs, such as the Crips and Bloods, conduct their wars with drive-by shootings utilizing such weapons as Uzis, AK-47's, and MAC-10's. Both the gang members and their "high tech" weapons are indiscreet in their choice of victims, and as a result the number of innocent bystanders killed due to gang violence is increasing at an alarming pace. Such street gang activity has not confined itself to California. In an effort to expand its Crack marketplace, Crips' and Bloods' members have shown up in cities as far east as Canton, OH, Columbus, OH, Indianapolis, IN, Washington, D.C., Philadelphia, PA, and Central PA.

As previously stated the criminal element within our Asian communities, intimidates its victims by its mere reputation for violence and its known possession of high powered weapons. Their indiscriminate use is resulting more and more in the death of innocent bystanders. Always fascinated with guns, Asian gang members have utilized handguns since the 1970's. The situation has worsened since 1980, however, with the use of Uzis and other automatic weapons.

We appreciate this opportunity to address the committee and to help strengthen the sanctions which already exist against crime in our society. MAGLOCLEN would also like to thank you for your generous and continued support of its efforts in combatting organized crime, as well as this opportunity to address this committee.

Senator METZENBAUM. Mr. Friel, or Captain Friel, we are very happy to have you with us here today.

STATEMENT OF CAPT. FRANCIS FRIEL

Mr. FRIEL. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, the Federal RICO statute enacted in 1970 was established and designed to attack criminal organizations, arrest its members, and destroy their infrastructure. Of the two key elements, the enterprise, and the pattern of racketeering activity, it is the pattern of racketeering activity which defines the predicate offenses, at least two of which must be participated in, to further the enterprise. Acts of racketeering contained in the statute are numerous and varied, but as extensive as that list is, there are no gun violations listed as predicate offenses.

Since the assassination of Philadelphia La Cosa Nostra mob boss, Angelo Bruno in March 1980, a wave of violence has been perpetrated by successive mob bosses. Murders have continued almost unabated until some 35 organized crime members and their associates were slaughtered in the streets. This level of sustained violence would rival any violence committed anywhere during the modern history of this country. All but three of these murders were committed with a firearm.

In my experience investigating these organized crime murders, and those responsible, it is obvious that the direction of the local mob family is headed is an attempt to control the narcotics distribution network in Philadelphia. Consistent with the mob's strategy to control operations is their willingness to employ violence and murder to accomplish their goals. The principal tool used is the firearm.

The Philadelphia law enforcement community has been fortunate in joining hands in a task force approach to combat the efforts of both traditional and non-traditional organized crime.

The Philadelphia Police Department, the Philadelphia office of the FBI, ATF, the Pennsylvania and New Jersey State Police have combined their investigative efforts to successfully identify many organized crime figures in Philadelphia. These investigations have culminated in successful prosecutions accomplished by the Philadelphia District Attorney's Office and the Philadelphia Office of the Organized Crime Strike Force.

Philadelphia La Cosa Nostra boss, Nicodemo Scarfo and most of the principal members of his crime family are presently in custody awaiting trial on charges ranging from murder to violations of the RICO Act.

Non-traditional groups emerging in the Philadelphia area include lawless elements from an otherwise honest, hardworking Jamaican community known as the possees. Members of these possees have become extremely visible not only in Philadelphia but throughout the United States. These groups appear ready, if not anxious, to demonstrate their violent nature by their propensity for spraying automatic weapon fire indiscriminately into crowds of people.

Generally these shootings occur in an effort to eliminate competition from the lucrative drug trade. Philadelphia's experience with

this group began in 1984 with a single murder. Since that time, an additional 37 murders have been attributed to this group. The preferred weapon used in the overwhelming majority of these cases was a firearm; 12 of these murders have been solved.

During the course of these investigations, a frightening array of sophisticated firearms have been confiscated. The standard firearm issued to Philadelphia Police officers is a six shot .38 revolver. He frequently finds himself out-gunned and over-matched when encountering members of this group who have been apprehended with Uzi machine guns, Mach 10's and 9 millimeter automatic pistols.

Included in this body count is the execution style murders of 13 year old Anthony Williams and his 15-year-old brother, Cornell. Both boys were shot and killed because of their failure to account for $500 worth of crack cocaine that they were selling for their possee boss. In addition to those murders previously mentioned, the Philadelphia Police Department is investigating 44 other drug murders committed in 1988 alone. Thirty-six of those homicides were committed by an assailant using a firearm. Annually, approximately 80 percent of all Philadelphia homicides are committed with a firearm.

Sadly, none of the previously mentioned murders reflect the horror associated with Philadelphia's most notorious examples of the criminal use of firearms. On July 12 of this year, six-year-old Ralph Brooks was playing outside his house when he was caught in a shoot-out between rival drug dealers. Ralph was struck in the back with a .45 caliber slug which lodged in his spine. He remains alive in guarded condition, but he's paralyzed from the waist down.

Six days later, three young boys were minding their own business in a variety store. Unbelievably, two rival drug king pins entered the small store and began shooting at each other. A third drug king pin entered. He also began firing. All three boys were caught in the cross-fire and were struck by bullets. Eight-year-old Mica McCode was struck in the right foot and he survived his injury. Six-year-old Malcom Yates was struck in the right foot and left hip. He also survived. Five-year-old Marcus Yates was struck in the head with a bullet and was dead on arrival at a local hospital.

The increased use of firearms in criminal enterprises is graphically displayed in the Philadelphia drug arrest statistics. In 1986, during 2,862 arrests, officers encountered guns. In 1987, during 8,145 arrests, 416 guns were confiscated. In less than 7 full months in 1988, during 6,298 arrests, 400 guns were taken as evidence. Projected through the remainder of 1988, that would be approximately 700 guns, or almost six times as many guns as just 2 years ago.

With many more guns on the street, Philadelphia appears headed for a collision course with violence. For some time now, intelligence information indicates disputes between established drug dealers and the emerging organized drug groups will end in open warfare on the streets. It is probably through a miracle or the grace of God, that a police officer executing a search and seizure warrant for narcotics, has not been shot in 1988, although they have not been so lucky in previous years. Four young boys, all under the age of 9, were not so blessed.

Philadelphia's count is now up to six young children, all under the age of 9 years, have been shot in shoot outs in the last 2 weeks over drug transactions.

As much as a boon to law enforcement as the Federal RICO statute has been, authorities still face an enormous task in relation to controlling criminal enterprises. Strengthening the RICO statute by the inclusion of gun violations as predicate offenses would provide more ammunition for the battle to come.

In addition, a uniform Federal law mandating at least a 7-day waiting period for the purchase of a firearm would help to provide authorities with sufficient time to determine the suitability of the applicant.

The possession of firearms by persons in high-risk groups obviously adds to law enforcement's burden. A 7-day waiting period would help reduce the number of guns owned by persons subject to legal prohibitions and would lead to the desired reduction of gun violence.

Finally, the continued unified effort of law enforcement, investigators and prosecutors, has been aided enormously by the sharing of information. Timely conferences and seminars identifying high risk criminal organizations and the methods of operation provided by regional information sharing agencies such as MAGLOCLEN has helped educate and alert law enforcement in geographical areas to the presence of an emerging threat.

I am both honored and privileged for the opportunity to present to this committee the concerns of the Philadelphia Police Department and I thank you for your attention, Mr. Chairman.

Senator METZENBAUM. Thank you very much, Captain Friel.

Captain Friel, one of the arguments the NRA makes against waiting periods is that they are a waste of police resources. According to the NRA, waiting periods will not benefit law enforcement, but will result in inconvenience to law abiding citizens.

Since Pennsylvania has a waiting period and requires a background check for a gun purchase, the Philadelphia Police Department must have considerable first hand experience with waiting periods. What do you think of the NRA's argument?

Mr. FRIEL. I disagree with that, respectfully, Senator. I believe that the additional time, the 7-day waiting period, will afford local police departments an opportunity to get into background investigations to determine the suitability of applicants for guns. And also to eliminate, by virtue of those investigations, those people who are considered high risk.

Senator METZENBAUM. Is it not a fact, in order to make an investigation, you just punch it into a computer and get some of the answers that you want?

Mr. FRIEL. Because of the existing time limitation of 48 hours, you are exactly right, Senator. Giving the 7-day waiting period, would afford much greater time to complete a background investigation.

Senator METZENBAUM. Pennsylvania has a 48-hour waiting period, is that it?

Mr. FRIEL. That is correct, sir.

Senator METZENBAUM. You testified that you would support adding some serious Federal firearms violations to the list of RICO

predicate offenses. One of the arguments advanced against expanding RICO is that firearms trafficking is not usually associated with organized crime. True or false?

Mr. FRIEL. False, Senator.

Senator METZENBAUM. You mentioned the drug traffickers you are dealing with in Philadelphia are armed with sophisticated weapons. Are those weapons similar to the Uzi and other guns brought in by Mr. McGuire?

Mr. FRIEL. That is correct, sir.

Senator METZENBAUM. Do you think these weapons would be harder to obtain if there were a national 7-day waiting period?

Mr. FRIEL. That is my conclusion. That is my belief, yes, Senator.

Senator METZENBAUM. Have you seen any instances of guns being brought in from out of state, even to avoid the 2-day waiting period in Pennsylvania?

Mr. FRIEL. Yes, I have. In my personal experience, in investigating over 2,000 homicides, one of the most notorious murders that ever occurred in Philadelphia, the assassination of roofing union president John McCullough in 1980 was committed with a .22 Ruger automatic that was purchased outside of the state of Pennsylvania specifically to avoid that which they would be required to do here.

Not only that weapon, but through the admission of those responsible, other weapons that were to be used in organized crime hits here in Philadelphia.

Senator METZENBAUM. Thank you very much, gentleman, your testimony has been very valuable to us.

[The prepared statement of Francis Friel follows:]

STATEMENT OF CAPTAIN FRANCIS P. FRIEL

PHILADELPHIA POLICE DEPARTMENT

The Federal RICO statute enacted in 1970 was established and designed to attack criminal organizations, arrest it's members and destroy their infrastructure. Of the two key elements, the enterprise, and the pattern of racketeering activity, it is the pattern of racketeering which defines the predicate offenses, at least two of which must be participated in, to further the enterprise. Acts of racketeering contained in the statute are numerous and varied, but as extensive as that list is, there are no gun violations listed as predicate offenses.

Since the assassination of Philadelphia La Cosa Nostra mob boss, Angelo Bruno on 3/21/80, a wave of violence has been perpetrated by successive mob bosses. Murders have continued almost unabated until some 35 organized crime members or their associates were slaughtered in the streets. This level of sustained violence would rival any violence committed anywhere during the modern history of this country. All but three of these murders were committed with a firearm.

In my experience investigating these organized crime murders and those responsible, it is obvious that the direction the local La Cosa Nostra family is headed is an attempt to control the narcotics distribution network in Philadelphia. Consistent with the mob's strategy to control operations is their willingness to employ violence and murder to accomplish their goals, and the principal tool used is the firearm. The Philadelphia Law Enforcement community has been fortunate in joining hands in a Task Force approach to

combat the efforts of both traditional and non-traditional organized crime.

The Philadelphia Police Department, the Philadelphia Office of the Federal Bureau of Investigation, the Pennsylvania and the New Jersey State Police, have combined their investigative efforts to successfully identify many organized crime figures in the Philadelphia area La Cosa Nostra family. These investigations have culminated in successful prosecutions accomplished by the Philadelphia District Attorney's Office and the Philadelphia Office of the Organized Crime Strike Force. The Philadelphia La Cosa Nostra boss, Nicodemo Scarfo and most of the principal members of his crime family are presently in custody awaiting trial on charges ranging from Murder to violations of the Racketeer Influenced and Corrupt Organization Act.

Non-traditional groups emerging in the Philadelphia area include lawless elements from an otherwise honest, hardworking Jamaican community known as Jamaican possees. Members of these possees have become extremely visible not only in Philadelphia but throughout the United States. These groups appear ready if not anxious to demonstrate their violent nature by their propensity for spraying automatic weapon fire indiscriminately into crowds of people. Generally these shootings occur in an effort to eliminate competition from the lucrative drug trade. Philadelphia's experience with this group began in 1984, with a single murder. Since that time, an additional 37 murders have been attributed to this group. The preferred weapon used in the overwhelming majority of these cases (30 out of 38) was a firearm. Twelve of these murders have resulted in the arrest of those responsible and an additional three warrants for arrest, are outstanding. During the course of these investigations, a frightening array of sophisticated firearms have been confiscated. The standard firearm issued to Philadelphia Police officers is a .38 six shot

revolver. He frequently finds himself out-gunned and over-matched when encountering members of this group who have been apprehended with Uzi machine guns, Mack 10's and 9mm automatic pistols.

Included in this body count is the execution style murders of 13 year old Anthony Williams and his 15 year old brother, Cornell Williams. Both boys were shot and killed because of their failure to account for $500 worth of crack cocaine that they were selling for their Jamaican boss. In addition to those murders previously mentioned, the Philadelphia Police Department is investigating 44 other drug related murders committed in 1988. 36 of those homicides were committed by an assailant using a firearm. Annually, approximately 80% of all Philadelphia homicides are committed with a firearm.

Sadly, none of the previously mentioned murders reflect the horror associated with Philadelphia's most notorious examples of the criminal use of firearms. On July 12, 1988, 6 year old Ralph Brooks was playing outside his house when he was caught in a shoot-out between rival drug dealers. Ralph was struck in the back with a .45 caliber slug which lodged in his spine. He remains alive in guarded condition, paralyzed from the waist down.

Six days later, 3 young boys were minding their own business inside a variety store. Unbelievably, two rival drug king pins entered the small store and began shooting at each other. A third male also began firing. All three boys caught in the cross-fire were struck by bullets. 8 year old Mica McCode was struck in the right foot and survived. 6 year old Malcom Yates was struck in the right foot and left hip. He also survived. 5 year old Marcus Yates was struck in the head by a single bullet and was dead on arrival at a local hospital.

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With many more guns on the street, Philadelphia appears headed on a collision course with violence. For some time now, intelligence information, combined with source information, indicates disputes between established drug dealers and the emerging organized drug groups will end in open warfare on the streets of Philadelphia. It is probably through a miracle or the grace of God, that a Police officer executing a Search & Seizure warrant for narcotics, has not been shot during a drug raid in 1988. Four young boys, all under the age of 9, were not so blessed.

As much as a boon to law enforcement as the Federal RICO statute has been, authorities still face an enormous task in relation to controlling criminal enterprises. Strengthening the RICO statute by the inclusion of gun violations as predicate offenses would provide more ammunition for the battle to come.

In addition, a uniform Federal law mandating at least a seven day waiting period for the purchase of a firearm would help to provide authorities with sufficient time to determine the suitability of the applicant.

The possession of firearms by persons in high risk groups obviously adds to law enforcement's burden. A seven day waiting period would help reduce the number of guns owned by persons subject to legal prohibitions and would lead to the desired reduction of gun violence.

Finally, the continued unified effort of law enforcement, investigators and prosecutors, has been aided enormously by the sharing of information. Timely conferences and seminars identifying high risk criminal organizations and the methods of operation provided by regional information sharing agencies such as the MAGLOCLEN agency has helped educate and alert law enforcement in geographical areas to the presence of an emerging threat.

I am both honored and privileged for the opportunity to present to this committee the concerns of the Philadelphia Police Department.

I wish to thank you for your attention and I would be happy to answer any questions you may have.

Senator METZENBAUM. Our next panel consists of Larry Joiner, Chief of Police, Kansas City, Missouri; George Napper, Commissioner, Department of Public Safety, Atlanta, Georgia; and Hubert Williams, president, Police Foundation, on behalf of the Law Enforcement Steering Committee, Washington, D.C.

We are very happy to welcome all of you and we are particularly pleased to have you with us again, Mr. Williams. You have been very helpful in the past, in your testimony before.

I think you all know of the 5-minute limitation, with respect to speaking.

STATEMENT OF A PANEL CONSISTING OF LARRY JOINER, CHIEF OF POLICE, KANSAS CITY, MO; GEORGE NAPPER, COMMISSIONER, DEPARTMENT OF PUBLIC SAFETY, ATLANTA, GA; AND HUBERT WILLIAMS, PRESIDENT, POLICE FOUNDATION, ON BEHALF OF THE LAW ENFORCEMENT STEERING COMMITTEE, WASHINGTON, DC

STATEMENT OF LARRY JOINER

Mr. JOINER. Thank you, Mr. Chairman. It is a pleasure to address this committee.

Kansas City's initial success story on organized drug trafficking and the disruption of the flow of crack cocaine in Kansas City was the Jamaican Organized Crime Task Force investigation. In January 1986, the Kansas City, Missouri Police Department became aware of a group of Jamaican nationals who had come to Kansas City to initiate a cocaine distribution network. This group was dealing a new narcotics substance known as crack. Crack, to this point, was not a drug of choice among cocaine abusers.

In May 1986, an OCDETF task force was initiated to combat the Earl Wilson organization, a group of Jamaicans who introduced crack in the Kansas City area and then became heavily involved in narcotics trafficking in the area. This task force includes members of the U.S. attorney's office, Bureau of Alcohol, Tobacco and Firearms, U.S. Customs Service, the Immigration Naturalization Service, Internal Revenue Service, the Drug Enforcement Administration, and the Kansas City, Missouri Police Department officers. This task force was formed to attack the identified Jamaican organized crime group.

The majority of Jamaican Posse members are convicted felons, illegal aliens or both. Gang members start their criminal careers in Jamaica and frequently become fugitives from that country. Many fugitives have fled elsewhere including the United States.

Street level narcotics and firearms dealers utilized by the gang are recruited from Jamaican communities within the United States or from the geographic neighborhoods of Jamaica. The expansion and increase in the number of posses can be attributed to opportunism and the lucrative market of narcotics trafficking, especially in crack cocaine.

Jamaican gang task forces in several United States cities are trying to determine if posse drug money is being sent back to Jamaican political parties gearing up for national elections.

In Kansas City, like other jurisdictions, millions of dollars were being generated by narcotics sales and there was nothing here in

the United States that indicated outward wealth. Even people high up in the hierarchy of Jamaican posses do not exhibit immense wealth and are living relatively modestly.

Some American posse operations have abandoned the strictly political alignment observed in Jamaica in favor of business ties which increases the ability to make high amounts of money, especially in crack cocaine. What they have not abandoned, however, is the gunfighter mentality as displayed in Hollywood westerns and Jamaican political strife.

Today, law enforcement officials in various jurisdictions blame Jamaican posses for hundreds of homicides and large scale drug and gunrunning operations in at least 12 cities. In the past few years, the posses have killed people in New York; Washington, D.C.; Houston; Dallas; and, of course, in Kansas City. In south Florida, where five rival posses are currently vying for power, the gangs have murdered over 150 people.

Jamaican organized crime gangs have smuggled thousands of high-powered handguns and rifles from Miami to Jamaica in an ongoing scheme to arm drug dealers and criminals who are linked to the islands' two dominant political parties. Hundreds of guns that have been recovered by Jamaican police have been traced to southern Florida and other jurisdictions.

Violence is commonplace in and around Jamaican narcotics traffickers with 24 homicides reported since January 1986, in Kansas, City, Missouri. All but one involved firearms.

Intelligence we have gained from this operation, specifically regarding firearms, indicates the following trends: we believe Jamaican narcotics traffickers obtain their firearms from three primary sources. Approximately one-third of the firearms seized were reported stolen from private citizens or businesses. As an example, one firearm recovered was traced to a Walmart store in Blue Springs, Missouri. An inventory of their records revealed 28 missing firearms. To date, only three have been recovered.

Senator METZENBAUM. Your time is going to run out if you read all of the examples. In fact, you only have about a minute left.

Mr. JOINER. One defendant was found sitting on a firearm when a search warrant was executed. He admitted purchasing the firearm for $20.

The third group are considered weapons of choice and they range from the AR–15 military assault rifle, TEC–9's; large caliber semiautomatic pistols and revolvers. Tracing reveals that these weapons were purchased by female associates and traffickers utilizing fictitious ID routinely obtained their weapons of choice through legitimate firearms dealers.

Twelve firearms were purchased by a Jamaican national who was arrested in Miami. Three of those showed up in Kansas City, Missouri.

An Uzi machine gun used in an ambush on a Jamaican police station by organized crime posse members, in which three police officers died and six were wounded, was traced to a Miami gun shop. Investigators later found that the man who bought the weapon also purchased 30 other weapons, three of which were recovered in Kansas City, Missouri.

To date, our investigation has resulted in the arrest and indictment of 109 defendants in Federal Court, 43 defendants in state court, and the deportation of 23 illegal aliens. Over 100 Jamaican crack houses were raided through the combined efforts of the task force. These raids have resulted in the seizure of 184 handguns, 37 assault rifles, two machine guns, 32.5 kilograms of cocaine and $600,000 in assets.

I would just like to close by saying that all of these efforts, completed and ongoing, against organized drug trafficking in Kansas City are accomplished through the meshing of local, State and Federal law enforcement resources into a cooperative venture. It has been obvious to us that legislation which would minimize firearms in the possession of wrong doers, especially drug traffickers, would be of extreme importance to maximize the safety factor toward law enforcement officers, as well as the law-abiding citizens within our communities.

Thank you.

Senator METZENBAUM. Thank you, Chief.

As I understand it, Missouri has a system requiring a permit to purchase a handgun?

Mr. JOINER. Yes. You are required to get a permit from the county sheriff. Usually it is issued within 30 minutes of the application. You just wait for it, run a computer check to see if you have any warrants outstanding for you, or if you are a convicted felon. That is the extent of the check.

Senator METZENBAUM. Do you believe that has deterred drug traffickers from purchasing handguns in Missouri?

Mr. JOINER. As limited as that is, it has acted somewhat to deter them simply because we are a border city and across the state line, in Kansas, there is no requirement at all. So many of them go over there to purchase their weapons.

Senator METZENBAUM. Would a national waiting period make it easier to protect the citizens of Missouri from armed narcotics traffickers?

Mr. JOINER. Yes, it would.

Senator METZENBAUM. I thank you, Chief.

[The prepared statement of Larry Joiner follows:]

STATEMENT OF LARRY JOINER

CHIEF OF POLICE

KANSAS CITY, MO

HEARING ON THE RELATIONSHIP BETWEEN FIREARMS AND DRUG TRAFFICKING AND THE IMPACT OF A WAITING PERIOD FOR HANDGUN PURCHASES

SENATE SUBCOMMITTEE ON THE CONSTITUTION

AUGUST 2, 1988

GUNS, DRUGS AND VIOLENCE

KANSAS CITY'S INITIAL SUCCESS STORY ON ORGANIZED DRUG TRAFFICKERS AND THE DISRUPTION OF THE FLOW OF CRACK COCAINE IN KANSAS CITY WAS THE JAMAICAN ORGANIZED CRIME TASK FORCE INVESTIGATION. IN JANUARY, 1986, THE KANSAS CITY, MISSOURI POLICE DEPARTMENT BECAME AWARE OF A GROUP OF JAMAICAN NATIONALS WHO HAD COME TO KANSAS CITY TO INITIATE A COCAINE DISTRIBUTION NETWORK. THIS GROUP WAS DEALING A NEW NARCOTICS SUBSTANCE KNOWN AS CRACK. CRACK TO THIS POINT WAS NOT A DRUG OF CHOICE AMONG COCAINE ABUSERS.

IN MAY, 1986, AN OCDETF TASK FORCE WAS INITIATED TO COMBAT THE EARL L. WILSON ORGANIZATION, A GROUP OF JAMAICANS WHO INTRODUCED "CRACK" INTO THE KANSAS CITY AREA AND THEN BECAME HEAVILY INVOLVED IN NARCOTICS TRAFFICKING IN THE AREA. THIS TASK FORCE INCLUDED MEMBERS OF THE U.S. ATTORNEY'S OFFICE, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, U.S. CUSTOMS SERVICE, IMMIGRATION NATURALIZATION SERVICE, INTERNAL REVENUE SERVICE, THE DRUG ENFORCEMENT ADMINISTRATION, AND KANSAS CITY, MISSOURI POLICE DEPARTMENT OFFICERS. THIS TASK FORCE WAS FORMED TO ATTACK THE IDENTIFIED JAMAICAN ORGANIZED CRIME GROUP.

THE MAJORITY OF JAMAICAN POSSE MEMBERS ARE CONVICTED FELONS, ILLEGAL ALIENS OR BOTH. GANG MEMBERS START THEIR CRIMINAL CAREERS IN JAMAICA AND FREQUENTLY BECOME FUGITIVES FROM THAT COUNTRY. MANY FUGITIVES WHO HAVE FLED ELSEWHERE INCLUDING THE UNITED STATES HOLD MID TO HIGH LEVEL POSITIONS IN A POSSE. STREET LEVEL NARCOTICS AND FIREARM DEALERS UTILIZED BY THE GANG ARE RECRUITED FROM JAMAICAN COMMUNITIES WITHIN THE UNITED STATES OR FROM THE GEOGRAPHIC NEIGHBORHOODS OF JAMAICA. THE EXPANSION AND INCREASE IN THE NUMBER OF POSSES CAN BE ATTRIBUTED TO OPPORTUNISM AND THE LUCRATIVE MARKET OF

NARCOTICS TRAFFICKING, ESPECIALLY IN CRACK COCAINE.

JAMAICAN GANG TASK FORCES IN SEVERAL UNITED STATES CITIES ARE TRYING TO DETERMINE IF POSSE DRUG MONEY IS BEING SENT BACK TO JAMAICAN POLITICAL PARTIES GEARING UP FOR NATIONAL ELECTIONS. IN KANSAS CITY, LIKE OTHER JURISDICTIONS, MILLIONS OF DOLLARS WERE BEING GENERATED BY NARCOTICS SALES AND THERE WAS NOTHING HERE IN THE UNITED STATES THAT INDICATES OUTWARD WEALTH. EVEN PEOPLE HIGH UP IN THE HIERARCHY OF JAMAICAN POSSES DO NOT EXHIBIT IMMENSE WEALTH AND ARE LIVING RELATIVELY MODESTLY. SOME AMERICAN POSSE OPERATIONS HAVE ABANDONED THE STRICTLY POLITICAL ALIGNMENT OBSERVED IN JAMAICA IN FAVOR OF BUSINESS TIES WHICH INCREASES THE ABILITY TO MAKE HUGH AMOUNTS OF MONEY, ESPECIALLY IN CRACK COCAINE. WHAT THEY HAVE NOT ABANDONED, HOWEVER, IS THE GUNFIGHTER MENTALITY AS DISPLAYED BY HOLLYWOOD WESTERNS AND JAMAICAN POLITICAL STRIFE.

TODAY, LAW ENFORCEMENT OFFICIALS IN VARIOUS JURISDICTIONS BLAME JAMAICAN POSSES FOR HUNDREDS OF HOMICIDES AND LARGE SCALE DRUG AND GUNRUNNING OPERATIONS IN AT LEAST 12 CITIES. IN THE PAST FEW YEARS, THE POSSES HAVE KILLED PEOPLE IN NEW YORK, WASHINGTON, D.C., HOUSTON, DALLAS AND, OF COURSE, IN KANSAS CITY. IN SOUTH FLORIDA WHERE FIVE RIVAL POSSES ARE CURRENTLY VYING FOR POWER, THE GANGS HAVE MURDERED OVER 150 PEOPLE.

JAMAICAN ORGANIZED CRIME GANGS HAVE SMUGGLED THOUSANDS OF HIGH POWERED HANDGUNS AND RIFLES FROM MIAMI TO JAMAICA IN AN ONGOING SCHEME TO ARM DRUG DEALERS AND CRIMINALS WHO ARE LINKED TO THE ISLANDS' TWO DOMINANT POLITICAL PARTIES. HUNDREDS

OF GUNS THAT HAVE BEEN RECOVERED BY JAMAICAN POLICE HAVE BEEN TRACED TO SOUTHERN FLORIDA AND OTHER JURISDICTIONS.

VIOLENCE IS COMMON PLACE IN AND AROUND JAMAICAN NARCOTICS TRAFFICKERS WITH (24) HOMICIDES REPORTED SINCE JANUARY, 1986, IN KANSAS CITY, MISSOURI. ALL BUT (1) INVOLVED A FIREARM.

INTELLIGENCE WE HAVE GAINED FROM THIS OPERATION, SPECIFICALLY REGARDING FIREARMS, INDICATES THE FOLLOWING TRENDS.

WE BELIEVE JAMAICAN NARCOTICS TRAFFICKERS OBTAIN THEIR FIREARMS FROM PRIMARILY (3) SOURCES:

(A) APPROXIMATELY 1/3 OF THE FIREARMS SEIZED WERE REPORTED STOLEN FROM PRIVATE CITIZENS OR BUSINESSES.

EXAMPLES: (1) ONE FIREARM RECOVERED WAS TRACED TO WALMART IN BLUE SPRINGS, MISSOURI. AN INVENTORY OF THEIR RECORDS REVEALED (28) MISSING FIREARMS. TO DATE, ONLY (3) FIREARMS HAVE BEEN RECOVERED.

(2) ON DECEMBER 29, 1986, A SMITH AND WESSON REVOLVER WAS SEIZED DURING A SEARCH WARRANT IN KANSAS CITY, MISSOURI. INVESTIGATION REVEALED THE FIREARM WAS STOLEN ON DECEMBER 26, 1986, FROM A RESIDENTIAL BURGLARY IN OVERLAND PARK, KANSAS.

(3) ONE DEFENDANT WAS FOUND SITTING ON A FIREARM WHEN A SEARCH WARRANT WAS EXECUTED. HE ADMITTED PURCHASING THE FIREARM FOR $20.00. A TRACE REVEALED THAT THE FIREARM WAS STOLEN FROM A FIREARMS SALESMAN ON OR ABOUT JUNE

22, 1984, IN KANSAS CITY, MISSOURI

(B) 25% TO 30% OF THE FIREARMS FOUND IN "CRACK" HOUSES WERE TAKEN "IN TRADE" FOR NARCOTICS. THESE FIREARMS ARE GENERALLY OLDER MODELS AND ARE PART OF THE "NATURAL SUPPLY" OF FIREARMS IN THE COMMUNITY. THEY ARE PRIMARILY HANDGUNS AND SOME LONG GUNS. ONE COULD SPECULATE, THAT THEY ARE STOLEN, BUT DUE TO THEIR AGE THEY ARE IMPOSSIBLE TO TRACE.

(C) THE THIRD GROUP ARE CONSIDERED THE "WEAPONS OF CHOICE" AND THEY RANGE FROM AR-15 MILITARY ASSAULT RIFLE: TEC-9's; LARGE CALIBER SEMI-AUTOMATIC PISTOLS AND REVOLVERS. FIREARMS TRACING HAS REVEALED THAT "STRAW PURCHASES" BY FEMALE ASSOCIATES AND TRAFFICKERS UTILIZING FICTITIOUS ID ROUTINELY OBTAIN THEIR "WEAPONS OF CHOICE" THROUGH LEGITIMATE FIREARMS DEALERS.

EXAMPLE: <u>APRIL - JUNE 1986</u>

12 FIREARMS - PURCHASED IN THREE SEPARATE TRANSACTIONS BY A JAMAICAN NATIONAL WHO PROVIDED FALSE INFORMATION IN THEIR ACQUISITION - WAS ARRESTED BY MIAMI ATF IN SEPTEMBER 1986 AND CONVICTED. THE ACTUAL DISPOSITION OF THE ILLEGALLY ACQUIRED FIREARMS REMAINED A MYSTERY FOR SOME TIME .

IN DECEMBER, 1987, THREE OF THE ORIGINAL (12) FIREARMS WERE RECOVERED IN TASK FORCE ACTIVITIES IN KANSAS CITY, MISSOURI

EXAMPLE: NOVEMBER 1986

AN UZI MACHINE GUN USED IN AN AMBUSH ON A JAMAICAN POLICE STATION BY ORGANIZED CRIME POSSE MEMBERS, IN WHICH THREE POLICE OFFICERS DIED AND SIX WERE WOUNDED, WAS TRACED TO A MIAMI GUN SHOP. INVESTIGATORS LATER FOUND THAT THE MAN WHO BOUGHT THE WEAPON ALSO PURCHASED 30 OTHER ASSORTED GUNS IN SOUTH FLORIDA, THREE OF WHICH WERE RECOVERED IN KANSAS CITY WHEN THE HEADQUARTERS OF THE JAMAICAN GANG OPERATION IN KANSAS CITY WAS RAIDED.

EXAMPLE: IN ONE CASE, OVER 50 FIREARMS HAVE BEEN ACQUIRED BY A LOCAL AMERICAN AT THE DIRECTION OF ONE JAMAICAN CELL CURRENTLY OPERATING IN KANSAS CITY AND NEW YORK. HE WAS PAID $11,000 FOR PURCHASING THE FIREARMS. THE AMERICAN, A CONVICTED FELON, CHOSE TO BUY THE WEAPONS IN KANSAS IN ORDER TO CIRCUMVENT OBTAINING A "GUN PERMIT" IN KANSAS CITY, MISSOURI.

TO DATE THIS INVESTIGATION HAS RESULTED IN THE ARREST AND INDICTMENT OF 109 DEFENDANTS IN FEDERAL COURT, 43 DEFENDANTS IN STATE COURT, AND THE DEPORTATION OF 23 ILLEGAL ALIENS. OVER 100 JAMAICAN CRACK HOUSES WERE RAIDED THROUGH THE COMBINED EFFORTS OF THE TASK FORCE. THESE RAIDS HAVE RESULTED IN THE SEIZURE OF 184 HANDGUNS, 37 ASSAULT RIFLES, 2 MACHINE GUNS, 32.5 KILOGRAMS OF COCAINE AND OVER $600,000 IN ASSETS.

THE COORDINATED TASK FORCE EFFORT HAS SEVERELY LIMITED THE JAMAICAN ORGANIZATION IN ITS IMPACT AND ABILITY TO DISTRIBUTE CRACK IN KANSAS CITY. THIS EFFORT, HOWEVER HAS CREATED A VACUUM WHICH IS BEING FILLED

BY OTHER ORGANIZED GROUPS.

IN FEBRUARY, 1988, A LARGE AND EXTENSIVE CUBAN COCAINE DISTRIBUTION NETWORK WAS SEVERELY CRIPPLED BY THE INDICTMENT AND ARREST OF EIGHT HIGH RANKING MEMBERS OF THE CUBAN ORGANIZATION IN KANSAS CITY. THIS INVESTIGATION WAS A JOINT EFFORT BETWEEN THE KANSAS CITY, MISSOURI POLICE DEPARTMENT AND THE FEDERAL BUREAU OF INVESTIGATIONS.

IN MARCH, 1988, A HIGHLY SOPHISTICATED AMERICAN COCAINE DISTRIBUTION GROUP WAS SEVERELY IMPACTED BY THE INDICTMENT OF 15 MEMBERS COMPRISING TOP LEADERSHIP AND MANAGEMENT OF A SOPHISTICATED ORGANIZED GROUP. THIS INVESTIGATION WAS A JOINT EFFORT BETWEEN THE KANSAS CITY, MISSOURI POLICE DEPARTMENT, BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS, DRUG ENFORCEMENT ADMINISTRATION, INTERNAL REVENUE SERVICE, AND THE JACKSON COUNTY DRUG TASK FORCE.

AS OUR EFFORTS CONTINUE, INFORMATION HAS BEEN GATHERED WHICH INDICATES THAT NEW GROUPS FROM LOS ANGELES CALLING THEMSELVES THE CRIPS/BLOODS ARE PRESENT IN KANSAS CITY DISTRIBUTING CRACK COCAINE.

EXAMPLE: ON SATURDAY, MARCH 19, 1988, A SHOOT-OUT AT A KANSAS CITY SELF-SERVE CAR WASH, FREQUENTED BY BLOODS/CRIPS AND THEIR ASSOCIATES, LEFT ONE TEENAGER DEAD AND FOUR WOUNDED. WITNESSES INDICATED THAT AS MANY AS 30 SHOTS WERE FIRED FROM AUTO-LOADING PISTOLS OR AN AUTOMATIC WEAPONS. A BLOODIED BLACK MALE WAS OBSERVED SHOOTING FROM THE PASSENGER SIDE OF A CADILLAC, AS THE CADILLAC EXITED THE CAR WASH.

IN CONCLUSION ALL OF THESE EFFORTS, COMPLETED AND ONGOING, AGAINST ORGANIZED DRUG TRAFFICKING IN KANSAS CITY ARE ACCOMPLISHED

THROUGH THE MESHING OF LOCAL, STATE AND FEDERAL LAW ENFORCEMENT RESOURCES INTO A COOPERATIVE VENTURE. IT HAS BEEN OBVIOUS TO US, THAT LEGISLATION WHICH WOULD MINIMIZE FIREARMS IN THE POSSESSION OF WRONG DOERS (ESPECIALLY DRUG TRAFFICKERS) WOULD BE OF EXTREME IMPORTANCE TO MAXIMIZE THE SAFETY FACTOR TOWARD LAW ENFORCEMENT OFFICERS AS WELL AS THE LAW-ABIDING CITIZENS WITHIN OUR COMMUNITIES.

Senator METZENBAUM. Our next witness is George Napper, Commissioner, Department of Public Safety, Atlanta, Georgia. Mr. Napper, we are happy to have you with us.

STATEMENT OF GEORGE NAPPER

Mr. NAPPER. Mr. Chairman, thank you very much. I am pleased to have this opportunity today. I am a past president of the National Organization of Black Law Enforcement Executives, a board member of the Police Executive Research Forum and a member of the International Association of Chiefs of Police.

I am here today primarily as a law enforcement executive from the city of Atlanta. I am not an objective observer; rather I am one who is very much involved and concerned.

I do not believe that children in the United States should have to grow up dodging bullets. I do not believe that it is acceptable that homicide should be the primary cause of death for any sector of our community, anywhere in the country, such as is the case for black males ages 15 to 24. I do not believe that the lives of our police officers should be continuously placed at high risk because of the proliferation of hand guns and semi-automatic weapons in our increasingly violent society.

With drug related violence and the use of assault weapons, we find ourselves in a new situation in the urban areas of America. For the first time in recent history, the police face a new problem, the actual superiority of the weaponry of the criminal actors that we must police.

In one to one encounters, in houses, in apartment buildings and housing projects, on street corners, outside storefronts, in liquor stores, the police face drug related groups of individuals and gangs who possess weaponry which is superior to ours.

With these new drug related crimes, criminals are using automatic and semi-automatic assault weapons which were created for contemporary military warfare. While I do not believe the war analogy fully applies to the encounters between our police and the new drug organizations, in one respect the war analogy is totally appropriate. In any warfare situation, when an enemy changes its weaponry or personnel deployment, the other side will in time be forced to change its strategy.

Assault weapons are now being used by groups of more or less organized drug-related gangs, and by use at a younger and younger age.

As we are faced with this new situation, we are encouraged to react in one of two ways. Both represent a threat to good police work. One, we find our officers reacting with increasing caution, exercising extreme reluctance to police certain areas of their city, or to investigate specific crimes or to act on warrants in settings where they expect to encounter drug related actors armed with assault weapons.

Or we find people seeking to respond to the new threat by matching firepower with firepower, moving with increased aggressiveness and speed, thinking in an increasing number of encounters, that they must act first and quickly, kill or be killed, even if it increases the probability of human error.

The question then is what you can you, as legislators at the Federal level, do for us as police faced with these new conditions? First, a national waiting period for the purchase of handguns is absolutely essential and necessary.

I also believe that we need to consider new regulatory and enforcement strategies for assault weapons. These weapons are not designed for hunting wild game. Rather they are designed, and increasingly being used, to stalk and attack people.

You should consider Federal regulatory and enforcement legislation which treats assault weapons as a specific and special category of weapons with different licensing requirements.

Limitations on the flow and use of assault weapons through changes in their licensing and regulation can serve to improve the safety and security of our community. It would improve the role of police in dealing with drug related violence brought on by drug related gangs and posse activities in our cities. Therefore, they are a giant step in the right direction.

Thank you, sir.

Senator METZENBAUM. Thank you very much.

Commissioner, can we effectively fight the war on drugs without working to interdict the flow of weapons to narcotics traffickers?

Mr. NAPPER. Would you repeat your question?

Senator METZENBAUM. Can we effectively fight the war on drugs without working to interdict the flow of weapons to narcotics traffickers?

Mr. NAPPER. No, sir. I think any attempt to think that we can meaningfully impact the war on drugs without understanding the central role that weapons play is trite. As has been indicated before, the weaponry is a tool of the trade and our concern also has to do with the fact that we are finding that the drug entrepreneurs are getting younger and younger. Therefore, those who are involved with weaponry are getting younger and younger.

It is not surprising for our police officers to take automatic weapons away from 12, 13, and 14 year olds.

Senator METZENBAUM. Do you feel that the war on drugs would be aided by a national 7-day waiting period bill?

Mr. NAPPER. I think it would be impacted tremendously. Obviously, it is not a panacea and I think, to some extent, as I indicated in my testimony, that while there is a great need for a national waiting period for the purchase of handguns, legislation will not cover some of the weaponry that is increasingly used by those in the drug situation.

It is an important step and it is a step that I think we have to take to let our police officers and others know that we do care about the situation which we are forced to deal with on a daily basis.

Senator METZENBAUM. Thank you very much, Mr. Napper.

[The prepared statement of George Napper follows:]

Testimony before the Subcommittee on the Constitution
of the Senate Committee on the Judiciary

Firearms Trafficking and Drug Trafficking

Presented by

Commissioner George Napper
Atlanta Department of Public Safety

August 2, 1988

Mr. Chairman, Members of the Subcommittee, Ladies and Gentlemen: I am pleased to have the opportunity to talk with you today. I am Past-President of the National Organization of Black Law Enforcement Executives, a board member of the Police Executive Research Forum and a member of the International Association of Chiefs of Police. But I am here today primarily as a law enforcement administrator in Atlanta a predominantly black city. I am not an objective observer; rather I am one who is very much involved and concerned. I am concerned when I see the disproportionate number of social ills and violent crimes which occur in the black community. I am concerned with the aura of violence which typifies some of our neighborhoods, and which is largely rooted in the accessibility of guns. I am concerned that the leading cause of death among young black males 15-24 is homicide and that most of these are committed with firearms.

I commend Chairman Simon and Senator Metzenbaum for holding these hearings for I share your concerns that something must be done to keep guns out of the wrong hands. The wrong hands I speak of are those of the depressed employee, distressed family member, petty criminal, truant student, youth gang member, 12 year old crack house lookout, vicious drug ring member and the individual drug entrepreneur.

Very alarming and of immediate concern to me, is the ever increasing evidence being generated nationally that the link between firearms trafficking and drug trafficking is becoming more solidly fused. On the one hand, weapons are being acquired daily by drug traffickers to protect their supplies and territories. On the other hand, weapons are directly traded out for drugs or sold at tremendous profits that in turn are used to purchase drugs locally, nationally, and internationally.

In Atlanta, my Narcotics Squad rarely conducts a raid now during which weapons are not found. Like other cities in the country we are repeatedly encountering drug traffickers who have increased both the quality and quantity of weapons they use. No longer are we confronted with Saturday night specials. Instead the trafficker is well armed with expensive handguns, rifles, and UZIs that most often are obtained through legal outlets. We frequently find them in the hands of young, impoverished and poorly educated adolescents with whom they merely become thoughtlessly used tools of death and injury. This is a particular problem in Atlanta's black community which includes some 43 project housing complexes.

Nationally variable gun control laws found from state to state perpetuate both interstate and international gun and drug trafficking. A recent Atlanta raid yielded close to 40 guns destined for New York. Guns purchased legally in Florida and Ohio

have been traced to Washington DC, New York City, and the Dominican Republic. Guns purchased in Texas have surfaced in Washington DC, Los Angeles, Jamaica, and the Philippines. Guns purchased in my own state of Georgia have surfaced both in Washington DC and New York City. Not surprising is that in the majority of cases the weapons were traced to drug traffickers. It logically follows then that as the drug investment increases so does the perceived need of increased protection.

Less dramatic but also important is the impact of inconsistent laws in our homes and work places. Let me tell you about a recent incident which occurred across the street from my office. At 8:30 a.m. on the morning of April 24, an employee of a public utility opened fire with a .38 caliber pistol. After shooting her supervisor and manager, she turned the gun on herself and committed suicide. Passed over for a promotion, the woman had submitted her notice of resignation earlier in the week. The

afternoon before the shooting, the employee bought the .38 caliber snubnose revolver for $135.00 in a neighboring jurisdiction which does not require a waiting or cooling off period. Neighbors later described the woman as a "nice respectable lady." She had been employed by the utility for 8 years.

Though the incident occurred in the Atlanta jurisdiction, it was made possible by the lack of a waiting period in a neighboring location. And that points out the need for national legislation. The patchwork quilt approach has never worked, and it never will.

The guns/drugs connection is one way that we can attack the problem. I believe that a ban on handguns is the most effective means of controlling the violence associated with them. I do not believe, however, that I will see such a ban in my lifetime. A less effective but next best step is the establishment of a

national waiting period before handgun purchase. In 1981 the Attorney General's Task Force on Violent Crime urged the adoption of such a waiting period, as a part of a larger program of strong federal handgun laws. Most recently, in March 1987, major law enforcement executives were polled regarding the waiting period for handgun purchases. There was unanimous agreement among those responding that such legislation should be supported.

The waiting period serves two purposes. It provides time for law enforcement officials to conduct background investigations and allows for a cooling off period for potential handgun buyers. The City of Atlanta has had a 15-day waiting period since 1980. This ordinance allows us to deny applications on grounds of criminal record or mental instability. Often the paper work is completed and the handgun can be purchased before the waiting period is over. The 15 days, however, allows us to complete investigations even during peak periods. In the case of history

of prior mental illness, it also permits us to get a statement from the treating physician or psychologist regarding the competence of the applicant to own a handgun.

I strongly support the adoption of a national waiting period as one means to keep guns from falling into the wrong hands. I realize however, that this is not a panacea. Therefore, I also strongly support the expansion of RICO to include firearms offenses. RICO has been an effective means of combatting other types of crime because it invokes the power of the purse. It does so by reducing the racketeer's profit while bolstering the resources of the law enforcement agencies involved.

Given the tight resources typical of most law enforcement agencies, the possibility of acquiring RICO funds is a powerful incentive. It helps focus an agency's attention on an important problem in a very concrete way. And it does so in a way which I

believe is consistent with the intent of RICO. Recently in Cleveland, two men were indicted on federal firearms charges related to the purchase of 62 handguns. These weapons were purchased for resale in the Dominican Republic at 300% - 400% profit. Such activity clearly meets the definition of racketeering.

While I believe that RICO has been an important weapon in the war against illegal drugs, I believe it may be even more important in the war against firearms trafficking. Drugs are not easily identifiable. Guns on the other hand are traceable. Patterns of trafficking in both fire arms and drugs can be established through tracing confiscated guns.

In conclusion ladies and gentlemen, we in law enforcement are in a dilemma. We want to make every street safe for walking or driving day or night. We want to return the sounds of children

playing ball and tag to every park. We want to return every parking place in apartment and housing complexes to the law abiding resident.

We're making every effort to do just that. However, as long as the potpourri of gun laws in this country allows our agencies to be outnumbered and outgunned; and as long as we continue to allow our officers to be at maximum risk each day they're on the beat, we can not realistically expect to win and provide you and all of our citizens the total protection you deserve. We urgently request your assistance. Please pass the laws I spoke of earlier.

Again ladies and gentlemen I am most appreciative for this opportunity to appear before you.

Senator METZENBAUM. Our next witness is Hubert Williams, president of the Police Foundation, on behalf of the Law Enforcement Steering Committee.

I would like to publicly commend the Law Enforcement Steering Committee and the Police Foundation and the other groups associated with that organization for your continued strong and effective efforts to do something about crime in this country. You have been very effective and your voice has become louder and more recognized and respected by the Members of the Congress.

We are very happy to have you with us today, Mr. Williams.

STATEMENT OF HUBERT WILLIAMS

Mr. WILLIAMS. Thank you, very much, Senator Metzenbaum.

We are most pleased to be here. We would like to start out by commending you for your past leadership on the plastic guns bill, S. 49, and now for your support of the 7-day waiting period for handgun purchase which is so critical to effective law enforcement.

The Law Enforcement Steering Committee represents almost 500,000 law enforcement officers throughout the nation. The organizations making up the committee are the Federal Law Enforcement Officers Association, the Fraternal Order of Police, the International Brotherhood of Police Officers, the International Association of Chiefs of Police, the Major Cities Chiefs Administrators, the National Association of Police Organizations, the National Organization of Black Law Enforcement Executives, the National Troopers Coalition, the Police Executive Research Forum, the Police Foundation of which I am the president, and the Police Management Association.

We represent diverse interests in our coalition of both labor and management—troopers who patrol the highways, line officers who patrol the streets, and chiefs of police who run and administer the nation's local departments across the country.

Two and a half years ago, we did not exist. The National Rifle Association came to the hill and said they represented law enforcement. They distorted the position of the police community throughout the United States. As a result, we decided to come together on our own, to speak for law enforcement without an intermediary. That is the purpose for which we are here today.

Many coalition members are hunters or gun collectors. They are also fathers and mothers and wives who work as police officers throughout the country. They work in the rural communities and they work in the nation's cities. They patrol the highways and the streets.

And yet, despite the diversity within our group, we have come here to give our absolute and unanimous endorsement of the Brady amendment. It is impossible for us to keep guns out of the hands of criminals if we are denied the opportunity of screening gun purchases prior to issue of the weapon.

This amendment simply allows for a 7-day waiting period, in which the police can conduct routine clearance investigations. For those who would argue that it will compound police administrative problems and impose new burdens on the states, it should be noted

that under the terms of the law, if the states took no action within the 7-day period, the gun would automatically be issued.

We believe that this is a balanced piece of legislation. Anyone needing access to a gun immediately, can buy a long gun, a shotgun, a rifle for hunting or sport. If someone felt that their life was in jeopardy and could convince the chief of police that this was the case, they would be exempted from the waiting period.

This legislation meets the needs of the community of Americans who believe in hunting and sport and use weapons for those purposes. It also meets a critical need of the law enforcement community on the front lines, protecting the nation, the streets, and our citizens every day.

If the committee takes no action, then it will have in fact taken a very strong action and sent a message to police across this country. I urge you to look at our cities and today's police forces. Three or four years ago we did not have the kinds of weapons we have now. We are facing increasingly stronger and more powerful weapons in the street. The police must respond in kind. They are carrying heavier and heavier weapons. This escalation puts our citizenry at ever greater risk.

In our democratic system of laws, the police are a service institution. They are not a military institution. The police are not here to oversee. They are here to serve the people. If we are going to promote democratic values and ensure that the interest of the American people is safeguarded, that our Constitution has some meaning, then we as a people must ensure protection of our streets.

We have got to keep guns out of the hands of a criminal element engaged in narcotics trafficking and violence, an element that views innocent citizens who get in the way of their bullets as expendable, that oversees vast real estate empires used for processing, storing and distribution of drugs, and that enforces delinquent "accounts receivable" owed to drug pushers with arsenals of these weapons.

We simply must cut this at the root. We realize, of course, that the bill does not constitute a panacea, but it is an important first step, Senator, and we strongly urge this committee and this Congress to take a stand with the law enforcement community. Get behind the Brady amendment and give police the opportunity to do their job in the streets of America's cities.

Thank you.

Senator METZENBAUM. The Brady amendment, so we all understand each other, is that which is embodied in the 7-day waiting period bill that I have introduced in the Senate.

I am sure you are familiar with the NRA's argument that the Law Enforcement Steering Committee does not speak for police on the issue of waiting periods. What do you have to say about that?

Mr. WILLIAMS. The NRA, as I said in my testimony, came to Congress and told Senators and members of the House that they spoke for law enforcement. They did this on a number of bills. Now we are here to speak for ourselves.

Our members are elected representatives of police officers who walk the beat in the cities. I think if the NRA believes that the police community is not very serious about this waiting period legislation, they are going to find out differently. They are going to

see cops at the grass roots level in every city across the country making the same statements that we are making here today.

We merely represent them. They voted the police leadership into office and we have come to Congress to speak on behalf of these officers. During the fight for S. 49, the NRA was making the same argument. But police chiefs and police officers, for the first time in memory, formed a line. Hundreds of them came in uniform and marched up the street from the Washington, D.C. police headquarters, walked the halls of Congress. Some were in wheelchairs. They came to say to you that we need strong gun legislation so that the guns and weapons stay out of the hands of the wrong people.

NRA comes here today making the same type of argument. We totally disagree with them. This coalition represents law enforcement, not only throughout the nation, but every local institution in the country.

Senator METZENBAUM. I appreciate your comments, Mr. Williams.

Let me clarify a point, that the Chair indicated that the Brady amendment and my bill are quite identical. That requires some clarification because the Brady amendment only covers dealer sales. My bill, as was originally introduced, covers transfers between individuals, between friends.

I intend to modify that. I think the Brady amendment, which is more limited but I think deals with the real problem, is a more appropriate solution. So my amendment or my bill, depending on how we handle it, will deal with the substance as Sarah Brady has originally advocated it. That is only with dealer sales. I just thought I would clarify that point.

I want to thank you, Mr. Williams. You have been very helpful today, as well in the past. Commissioner Napper, I am very pleased that you were with us, as well as you, Chief Joiner. Thank you very much for your testimony.

[The prepared statement of Hubert Williams follows:]

TESTIMONY OF

HUBERT WILLIAMS

CHAIRMAN

LAW ENFORCEMENT STEERING COMMITTEE

AND

PRESIDENT

POLICE FOUNDATION

before the

Senate Judiciary Committee

Constitution Subcommittee

August 2, 1988

Good morning, Mr. Chairman.

I am Hubert Williams and I represent the Law Enforcement Steering Committee, a coalition of the nation's major professional law enforcement organizations. Representing almost 500,000 law enforcement officers, the steering committee is dedicated to promoting the nation's welfare and safety.

The organizations making up the Law Enforcement Steering Committee are the Federal Law Enforcement Officers Association, the Fraternal Order of Police, the International Brotherhood of Police Officers, the International Association of Chiefs of Police, the Major Cities Chiefs Administrators, the National Association of Police Organizations, the National Organization of Black Law Enforcement Executives, the National Troopers Coalition, the Police Executive Research Forum, the Police Foundation, of which I am the president, and the Police Management Association.

As a coalition comprised of the leading national policing organizations, we are deeply concerned with legislation that impacts on the safety of the American public.

Currently, law enforcement officers across the country are facing an uphill battle against the violence and crime that afflicted our citizens. Much of this, in our view, can be attributed directly to the drug problem and the proliferation of weapons in the hands of people bent on criminality or whose mental state is such that the potential for misuse constitutes an ominous societal threat.

One of the principal sources of weapons for drug gangs is through legitimate channels, including licensed dealers, in states that allow would-be purchasers immediate access to weapons. According to Bureau of Alcohol, Tobacco and Firearms statistics, in the past five years more than 800 people have been killed by the Jamaican drug gangs alone.

Several issues surround the problem of drugs and guns that are the tools of this illicit industry.

Guns are essential to the illegal narcotics industry. Guns are used to:

- Ensure security for real estate that is used to process, store, distribute, and transact the business of drugs;
- Enforce delinquent "accounts receivable" owed to drug pushers;
- Obtain and secure new markets, in terms of geography and commodities;
- Settle disagreements between labor and management.

Guns that have fallen into the hands of drug distributors have served to further isolate the police and the communities they serve.

Because of the presence of high-powered guns:

- Police respond to some areas of the communities they serve "in force" and with armored vehicles and with bullet proof vests;
- Police make "routine traffic stops" of some citizens by using the military tactics necessary to protect themselves from potential assault by automatic weapons;
- The drug dealers have been able to enforce a new breed of law--that of the drug economy--on certain segments of our urban communities, thus reducing or eliminating the legitimacy of the police in the eyes of the citizens they serve.

Because of the influx of high-powered, automatic weapons, the police are faced with a new breed of criminal act and new impossibilities confront the police:

- Police are now relegated to the tasks of cleaning up drug thugs "mushrooms", the slang term of disregard for the innocent bystanders gunned down by drug lords and their soldiers during settlement of their disputes;

- Police are left to confront the pain, anger, and distrust of the system generated by a system which protects the drug lords' rights to turn city streets into dark, dank, "mushroom gardens", yet refuses to protect the innocent victims of this illicit, illegal, demeaning and destructive enterprise.

According to New York City Police Commissioner Benjamin Ward, "at 11 p.m. on November 10, 1987, a New York City Police Department patrol car responded to a report of "shots fired" in the sixth-floor hallway of a Brooklyn apartment house. Upon arrival, the officers were informed by a young woman that a male acquaintance, known to her only as "Smurf", had been smoking crack earlier in the day, after which she had fallen asleep on her bed next to her 3-year-old son. She was awakened by the sound of gunfire and saw her acquaintance sitting at the foot of the bed firing a gun. She immediately fled the apartment, leaving behind her young son.

By the time the uniformed officers arrived, the shooting had ceased. The officers called for their supervisor and the Emergency Service Unit to respond. The apartment was sealed off and the Hostage Negotiations Team was requested. The apartment did not have a telephone and no through-the-door communication

could be established; no human sounds were heard emanating from within. At 1:30 a.m., members of the ESU entered and found "Smurf" lying on his back on a single bed. He offered no resistance and was placed under arrest. On an adjacent double bed was the lifeless, pajama-clad body of the three-year-old, the victim of multiple gunshot wounds to the head and chest area.

It is abundantly clear that guns kill people. And the combination of guns and drugs kills lots of people. This carnage must end. As a society, we must find a way to stop the madness."[1]

To effectively confront this illicit business, we must, at every possible instant, work to take the tools of the business away from those who profit by it, work for it, and support it. We are beginning. We are using asset seizure and forfeiture statutes to remove the spoils and production tools associated with this illegal business.

We need more. We need to use every Constitutional means possible to ensure that these drug lords and their soldiers have a difficult time obtaining the tools they use to forward their businesses. We need a concerted, coordinated, and consistent effort to dispossess the drug lords--

- Dispossess them of their illegally obtained millions;

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[1] "Guns, Drugs and Violence: An Unholy Alliance", Benjamin Ward, THE POLICE CHIEF, March 1988, pp. 53.

- Dispossess them of their Ferarris and fast "cigarette boats" obtained through their illegal activities;
- Dispossess them of their easy access to firearms;
- Dispossess them of their ability to turn our city streets into mushroom gardens.

The threat pose to public safety by this flow of weapons between and amongst the various states requires Federal legislative action that will establish, at minimum, a national 7-day waiting period as a precondition to the acquisition of such firearms. This statutory period is absolutely essential in order to ensure that guns are not obtained by those who are prohibited from ownership or possession. Such a waiting period is also a critical enforcement provision of the omnibus bill, in that it would close existing loopholes between states and help break the bloody drug-gun connection.

Senator METZENBAUM. Our next and last testimony consists of Mr. James Jay Baker, director, government affairs of the National Rifle Association; David Kopel, former assistant district attorney for the city of Manhattan; and Stephen Halbrook, attorney and PhD, Fairfax, Virginia.

We are happy to have each of you with us today. I want to say, Mr. Baker, it is my understanding that we thought that you would be notified by other members of the committee to be invited. We expected that you would testify. We found that one said he was and then did not get to you. And a second one indicated he was and did not get to you.

Mr. BAKER. Not a problem, Senator.

Senator METZENBAUM. Apparently we got to you because we are very happy to have your testimony and we certainly do not want you to feel that there was any intentional slighting in that occurrence.

Mr. BAKER. Not at all.

STATEMENT OF A PANEL CONSISTING OF JAMES JAY BAKER, DIRECTOR, GOVERNMENT AFFAIRS, NATIONAL RIFLE ASSOCIATION, WASHINGTON, DC; DAVID KOPEL, FORMER ASSISTANT DISTRICT ATTORNEY FOR THE CITY OF NEW YORK (MANHATTAN), NY; AND STEPHEN P. HALBROOK, ATTORNEY AND PH.D., FAIRFAX, VA

STATEMENT OF JAMES JAY BAKER

Mr. BAKER. Mr. Chairman, the National Rifle Association appreciates the opportunity to testify today.

Before moving to a discussion of S. 466, the 7-day waiting period bill, I would like to reiterate our continued opposition to incorporating firearms offenses as RICO predicates, for the reasons outlined in our testimony given before the full committee on May 19. If I might, I would like that previous testimony made a part of this record.

Senator METZENBAUM. Without objection, it will be. I might say that the complete testimony of each of the witnesses will be included in the record.

Mr. BAKER. Thank you, Senator.

Mr. Chairman, the NRA joins with the Justice Department and eight members of the full committee in being opposed to the RICO amendment. The Justice Department expressed its opposition most succinctly in its April 14 letter to Senator DeConcini, stating that the amendments were unnecessary, the offenses already carried heavy criminal penalties, and that the effect of the proposal would be to dilute the RICO Act almost to the point of converting it from a specialized organized crime statute into a Federal serious crime act. In short, the amendments would make virtually any gun crime into a RICO offense.

On the issue of a nationwide waiting period for police background check, I also ask that our previous testimony before this subcommittee be made part of the record.

Subsequent to that testimony, a Pennsylvania State economist has uncovered further evidence of the ineffectiveness of waiting pe-

riods. I ask that this letter, which is attached to my testimony, be made part of the record and I will just read a portion of it.

As you know, in Pennsylvania we have had for many years a 48 hours waiting period. Obviously, this is not sufficient time for the Pennsylvania State Police to run their criminal history record check. Ordinarily, the purchaser has been back to the retailer and picked up the gun before the state police are able to notify the dealer of any criminal convictions.

In this connection, a very important program was begun by the Pennsylvania state police in January 1982. This involved the microfilming and automated indexing of all records of sale. A conversion process of previously submitted records, which dated back to 1931 commenced at the same time. To date all such records of firearms purchased by individuals with a last name beginning with A through O have not only been microfilmed and indexed but subjected to a criminal record history background check. In other words, they have gone back through their firearms purchase records and done a criminal records check. About 1.5 million purchasers have now been processed.

The result? Only 207 persons over a period of 57 years were determined to have committed a crime that would make them ineligible to possess a firearm under Pennsylvania law. After investigation of 109 of these cases, charges were brought against 14 individuals. This is over a period of 57 years. Two cases were turned over to the Bureau of Alcohol, Tobacco and Firearms. Investigations remaining in 98 cases are continuing.

These data not only show that the waiting period and police check are extremely inefficient and ineffective crime-control measures, but also refute the claim of Handgun Control and others that law-abiding gun owners of today is likely to become the emotionally distraught or intoxicated murderer of tomorrow.

On a more general level, I would be interested in hearing how the proposed name-check background—and that is all this is, Senator, a name check only—is going to catch the serious drug traffickers with whom we are all concerned. How is this name check going to affect criminals who are, according to published statements by BATF agents, employing individuals without criminal records to make their firearms purchases?

How are local law enforcement agencies going to get hits on foreign nationals, such as the members of Jamaican posses, when those individuals do not have records in this country or in the NCIC?

Of what use is the name check when serious career criminals and drug traffickers are among the individuals most likely to procure false identification documents?

And finally, how are local law enforcement agencies going to retrieve records on new residents when most states do not have access to arrest records from other states?

I expect that the answers to all these questions is going to be that this waiting period proposal will have absolutely no effect on individuals about whom we are most concerned.

Mr. Chairman, and I will conclude, the most disturbing aspect of this debate is the attempt to find a nexus between illicit drug traffickers and the lawful purchasers of firearms. Such a nexus simply

does not exist. No rational person can seriously believe that individuals engaged in drug trafficking, individuals who break countless laws every day, individuals who make their living dealing in contraband are going to be deterred by a waiting period and police background check for the purchase of firearms.

At the same time, the evidence from states that have such systems is clear. Only law abiding individuals voluntarily subject themselves to police background checks.

Mr. Chairman, that concludes my testimony.

Senator METZENBAUM. Thank you very much, Mr. Baker.

Mr. Baker, I believe that the vast majority of the members of your organization, many of whom I know and are friends of mine, are just like the vast majority of Americans. I believe that your members support responsible gun ownership. I believe that they do not want to see drug traffickers and convicted felons have ready access to high powered weapons, leaving even the police outgunned. And I believe they support law enforcement. I know they do.

I have spoken with many of your members. I have spoken to them in airports. I have spoken to them in elevators. I have spoken to them in union meetings. Many of them do not understand what we are talking about in the legislative process.

In fact, I believe that if the facts were presented honestly to them, most of your members would support a seven day waiting period for handgun purchasers. But unfortunately, you and the Washington lobbyist for the NRA have not presented your case honestly to your members.

Mr. BAKER. I disagree with that, honestly.

Senator METZENBAUM. I understand that. You mailed them a four page letter that was full of gross distortions and frankly false statements. This Senator never called for banning the right of any individual to own a gun, nor have I ever taken a position that anybody would be committing a crime to own a gun.

Mr. BAKER. I disagree with that, as well, Senator.

Senator METZENBAUM. You disagree?

Mr. BAKER. Yes, sir. Your plastic gun bill, in its first version, would have banned quite a number of firearms.

Senator METZENBAUM. You support the plastic gun bill.

Mr. BAKER. In the second version, Senator, we do. That came out of the Department of Justice.

Senator METZENBAUM. That just changed it a little bit.

Mr. BAKER. No, sir, it changed it radically from banning guns to not banning guns.

Senator METZENBAUM. We were glad to have you on board with it.

Mr. BAKER. We were happy to be there, Senator.

Senator METZENBAUM. As I see it, and it bothers me, that I think you represent a very law-abiding organization.

Mr. BAKER. Thank you.

Senator METZENBAUM. And I think, generally speaking, a well respected organization. I think that you have not served your membership in the law enforcement community and the Congress well.

Let me just put to rest some of the claims contained in your letter, that are of concern to my constituents. First you say my

waiting period bill would "set up a national handgun registration system to deny you your right to own a handgun." That is your quote.

Mr. BAKER. That is Wayne LaPierre's quote, I believe, not mine.

Senator METZENBAUM. But he is with the NRA, is he not?

Mr. BAKER. I would be happy to explain that, if you would like.

Senator METZENBAUM. Just let me finish. The bill specifically requires that the forms generated by the waiting period be destroyed within 60 days. The bill says specifically, in its text, that it is not a registration statement.

Mr. BAKER. Where does it say that in the text?

Senator METZENBAUM. I do not think I am going to get into a dialogue with you, Mr. Baker, but I think that I would be very happy to show it to you at the conclusion of the hearing.

Second, you say that according to the CBO, the cost to law enforcement agencies for such a nationwide registration scheme would be "$30 to $40 million a year." That also is a quote.

We called CBO and asked if they had done any cost estimate on this bill. They have not. The numbers you are using come from very different legislation introduced last Congress requiring specific Federal background checks. The $30 to $40 million figure you quote has nothing to do with this bill.

Third, you say that if this bill passes "you can bet that they will be knocking at your door next year for you to open your private medical records. They are already talking about it." I have never heard a single sponsor of this bill ever make any such suggestions.

Mr. BAKER. Senator, may I respond?

Senator METZENBAUM. In fact the right to privacy is one that this Senator has consistently supported. All I say to you, Mr. Baker, is that I respect the right of the NRA to disagree with me or any other member of the Congress. But I do not respect the right of you or your organization or some other member of your organization to misrepresent the facts, just as I would not respect the right of any Senator or Member of Congress to misrepresent the facts in talking about a piece of pending legislation.

I would just say to you that saying to me that no, that letter is not yours, it is somebody else's——

Mr. BAKER. If I could respond, I would be happy to explain.

Senator METZENBAUM. Okay, go ahead.

Mr. BAKER. To start with, regarding registration, you are correct. It says your legislation says that the forms are to be destroyed. But there is nothing in the legislation that says it is not a registration scheme and there is nothing in there that prevents the police from taking those numbers, serial numbers, and putting them on some centralized recordkeeping system.

The cost estimate, you are correct, applied to a 14 day waiting period proposal, but it was the best one we had. It was an estimate, even in that case.

And Congressman Hughes did talk about opening up personal medical records in the context of H.R. 975, which is identical to your bill.

I might point out, if we are talking about exaggeration, I have a copy of an advertisement that you are running in your district that says "Howard Metzenbaum took on the gun lobby and passed a bill

to outlaw the cop killer bullets." As if we opposed that. The final bill we supported, Senator, as you well know, on cop killer bullets.

So I do not think that the National Rifle Association is the only one that uses some hyperbole in their fund raising documents.

Senator METZENBAUM. First, let me read you the language of the proposed legislation.

Unless the chief law enforcement officer to whom a copy of such sworn statement is sent determines that a transaction would violate Federal, State or local law, the officer shall destroy such copy within 60 days after the date the transferee made such——

Mr. BAKER. The copies, Senator, not the information. The information is not proscribed. If the officer wants to take that information and put it on a centralized computer system in that state, there is nothing in your legislation that prevents him from doing so.

Senator METZENBAUM. If that change were made, would the NRA support the bill?

Mr. BAKER. No, we have problems with the rest of the bill as well, Senator. We do not think it is going to work. The people you are trying to impact are the same ones that are going to have false ID, the same ones that get their guns on the black market, not through gun stores.

Senator METZENBAUM. Let me just conclude, so we may hear our other witnesses who also oppose the bill, when you say you supported the cop killer bullets——

Mr. BAKER. The final version, just as we supported your final version on plastic guns.

Senator METZENBAUM. Just a moment, Mr. Baker, for 8 months Senator Moynihan's bill on that subject had come out of committee and sat on the floor of the Senate. The only way it ever came to a vote is when one of your strongest supporters on the floor of the Senate had another bill on the floor of the Senate.

I rose on the floor of the Senate and said that I was going to offer a cop killer bullet bill as an amendment to his bill. That he did not want to occur.

Mr. BAKER. The final version of that legislation, Senator, we did not oppose.

Senator METZENBAUM. Mr. Baker, I don't interrupt you, would you be kind enough not to interrupt me.

Mr. BAKER. Certainly.

Senator METZENBAUM. It was only under those circumstances that we broke the eight month tie-up or suggested filibuster in connection with the cop killer bullet. It was then that I was able to get an agreement to bring the cop killer bullet legislation to the floor and to get an up or down vote.

In fact, we did pass it either 91 to 1 or 91 to 0, I do not remember which. But it is a fact that he was speaking for you and made no bones about it, when he had it tied up for eight months. So when you take advertisements and say that you supported the cop killer bullet——

Mr. BAKER. I am talking about your advertisement. We did not have one.

Senator METZENBAUM. You did not have one, that is right.

Mr. BAKER. I am talking about your campaign ad.

Senator METZENBAUM. I guess I have to just say to you in conclusion, Mr. Baker, that there was a time when the NRA stood for gun safety in the interests of sportsmen and law and order. I have to tell you that I feel a certain sadness that I find that you are no longer the friend of law enforcement and we find, in every one of my pieces of legislation, that we have all the law enforcement groups—not just some of them, all of them—supporting my legislation and we have the NRA in opposition.

I would hope that——

Mr. BAKER. Sometimes civil liberties issues are that way, Senator.

Senator METZENBAUM. Pardon?

Mr. BAKER. Sometimes civil liberties issues are that way.

Senator METZENBAUM. All right. I have no quarrel, but I am not sure that those are civil liberties issues.

Mr. BAKER. We think they are.

Senator METZENBAUM. Thank you very much.

[Submissions of Mr. Baker follow:]

NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
1600 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20036

TESTIMONY OF JAMES JAY BAKER

DIRECTOR

FEDERAL GOVERNMENT AFFAIRS

NATIONAL RIFLE ASSOCIATION

INSTITUTE FOR LEGISLATIVE ACTION

ON

S.466

"THE HANDGUN VIOLENCE PREVENTION ACT OF 1987"

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

August 2, 1988

MR. CHAIRMAN,

THE NATIONAL RIFLE ASSOCIATION OF AMERICA APPRECIATES THE OPPORTUNITY TO TESTIFY TODAY.

BEFORE MOVING TO A DISCUSSION OF S.466, I WOULD LIKE TO REITERATE OUR CONTINUED OPPOSITION TO INCORPORATING FIREARMS OFFENSES AS RICO PREDICATES, FOR THE REASONS OUTLINED IN OUR TESTIMONY BEFORE THE FULL COMMITTEE ON MAY 19TH. I HAVE ATTACHED THAT TESTIMONY AND ASK THAT IT BE MADE PART OF THE RECORD TODAY.

MR. CHAIRMAN, THE NRA JOINS WITH THE JUSTICE DEPARTMENT AND EIGHT MEMBERS OF THE FULL COMMITTEE IN BEING OPPOSED TO THE RICO AMENDMENT. THE JUSTICE DEPARTMENT EXPRESSED ITS OPPOSITION MOST SUCCINCTLY IN ITS APRIL 14TH LETTER TO SENATOR DECONCINI, STATING THAT THE AMENDMENTS "ARE UNNECESSARY -- THE OFFENSES ALREADY CARRY HEAVY CRIMINAL PENALTIES" AND THAT THE EFFECT OF THE PROPOSAL WOULD BE TO:

"DILUTE THE RICO ACT ALMOST TO THE POINT OF CONVERTING IT FROM A SPECIAL ORGANIZED CRIME STATUTE INTO A 'FEDERAL SERIOUS CRIME ACT' -- IN SHORT, THE AMENDMENTS WOULD MAKE VIRTUALLY ANY GUN CRIME . . . INTO A RICO OFFENSE."

ON THE ISSUE OF A NATIONWIDE WAITING PERIOD FOR POLICE BACKGROUND CHECK, AS OUTLINED IN S.466, I ALSO ASK THAT OUR PREVIOUS TESTIMONY BEFORE THIS SUBCOMMITTEE, WHICH IS ATTACHED, BE MADE PART OF THE RECORD.

SUBSEQUENT TO THAT TESTIMONY, A PENN STATE ECONOMIST HAS UNCOVERED FURTHER EVIDENCE OF THE INEFFECTIVENESS OF WAITING PERIODS. DR. ALAN KRUG RELATED HIS FINDINGS TO SENATOR SPECTER IN A LETTER DATED JULY 20. I ASK THAT THIS LETTER BE MADE PART OF THE RECORD AND WILL READ A PORTION OF IT FOR THE BENEFIT OF THE SUBCOMMITTEE:

> AS YOU KNOW, IN PENNSYLVANIA WE HAVE HAD FOR MANY YEARS A 48-HOUR WAITING PERIOD. OBVIOUSLY, THIS IS NOT SUFFICIENT TIME FOR THE PENNSYLVANIA STATE POLICE TO RUN THEIR CRIMINAL HISTORY RECORD CHECK OF THE HANDGUN PURCHASER. ORDINARILY, THE PURCHASER HAS BEEN BACK TO THE RETAILER AND PICKED UP THE GUN BEFORE THE STATE POLICE ARE ABLE TO NOTIFY THE DEALER OF ANY CRIMINAL CONVICTIONS.

IN THIS CONNECTION, A VERY IMPORTANT PROGRAM WAS BEGUN BY THE PA STATE POLICE ON JANUARY 1, 1982. THIS INVOLVED THE MICROFILMING AND AUTOMATED INDEXING OF ALL 'RECORDS OF SALE OF FIREARM SUBMITTED TO THE PSP. A CONVERSION PROCESS OF PREVIOUSLY SUBMITTED RECORDS, WHICH DATE BACK TO 1931, COMMENCED AT THE SAME TIME AND CONTINUES TO BE AN ONGOING EFFORT. TO DATE, ALL SUCH RECORDS OF FIREARMS PURCHASED BY INDIVIDUALS WITH A LAST NAME BEGINNING WITH A LETTER A THROUGH O HAVE NOT ONLY BEEN MICROFILMED AND INDEXED BUT SUBJECTED TO A CRIMINAL HISTORY RECORD CHECK. ABOUT 1,500,000 PURCHASERS HAVE NOW BEEN PROCESSED IN THIS EXERCISE.

THE RESULT? ONLY 207 PERSONS, OVER A PERIOD OF 57 YEARS, WERE DETERMINED TO HAVE POSSIBLY COMMITTED A CRIME THAT WOULD MAKE THEM INELIGIBLE TO POSSESS A FIREARM UNDER PA LAW SINCE THEY MADE THEIR PURCHASE. AFTER INVESTIGATION OF 109 of THESE CASES, CHARGES WERE BROUGHT AGAINST 14 INDIVIDUALS, OF WHICH THREE HAVE BEEN CONVICTED. TWO CASES WERE TURNED OVER TO THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS. INVESTIGATIONS IN THE REMAINING 98 CASES ARE CONTINUING.

THESE DATA NOT ONLY SHOW THAT THE WAITING PERIOD AND POLICE CHECK ARE EXTREMELY INEFFICIENT AND INEFFECTIVE CRIME-CONTROL MEASURES BUT ALSO REFUTE THE CLAIM OF HANDGUN CONTROL, INC. THAT THE LAW-ABIDING GUN OWNER OF TODAY IS LIKELY TO BECOME THE EMOTIONALLY DISTRAUGHT OR INTOXICATED MURDERER OF TOMORROW.

ON A MORE GENERAL LEVEL, I WOULD BE INTERESTED IN HEARING HOW THE PROPOSED NAME-CHECK BACKGROUND INVESTIGATION IS GOING TO CATCH THE SERIOUS DRUG TRAFFICKERS WITH WHOM WE ARE ALL CONCERNED. HOW IS THIS NAME CHECK GOING TO AFFECT CRIMINALS WHO ARE, ACCORDING TO PUBLISHED STATEMENTS BY BATF AGENTS, EMPLOYING INDIVIDUALS WITHOUT CRIMINAL RECORDS TO MAKE FIREARMS PURCHASES FOR THEM?

HOW ARE LOCAL LAW ENFORCEMENT AGENCIES GOING TO GET "HITS" ON FOREIGN NATIONALS -- SUCH AS THE MEMBERS OF JAMAICAN POSSES -- WHEN THOSE INDIVIDUALS DO NOT HAVE RECORDS IN THE NCIC?

OF WHAT USE IS THE NAME CHECK WHEN SERIOUS CAREER CRIMINALS AND DRUG TRAFFICKERS ARE AMONG THE INDIVIDUALS MOST LIKELY TO PROCURE FALSE IDENTIFICATION DOCUMENTS?

AND, FINALLY, HOW ARE LOCAL LAW ENFORCEMENTS AGENCIES GOING TO RETRIEVE RECORDS ON NEW RESIDENTS WHEN MOST STATES DO NOT HAVE ACCESS TO ARREST RECORDS FROM OTHER STATES?

I EXPECT THAT THE ANSWERS TO ALL THESE QUESTIONS IS GOING TO BE THAT THIS WAITING PERIOD PROPOSAL WILL HAVE ABSOLUTELY NO EFFECT ON INDIVIDUALS ABOUT WHOM WE ARE MOST CONCERNED.

MR. CHAIRMAN, THE MOST DISTURBING ASPECT OF THIS DEBATE IS THE ATTEMPT TO FIND A NEXUS BETWEEN ILLICIT DRUG TRAFFICKERS AND THE LAWFUL PURCHASERS OF FIREARMS. SUCH A NEXUS SIMPLY DOES NOT EXIST. NO RATIONAL PERSON CAN SERIOUSLY BELIEVE THAT INDIVIDUALS ENGAGED IN DRUG TRAFFICKING, INDIVIDUALS WHO BREAK COUNTLESS LAWS EVERY DAY, INDIVIDUALS WHO MAKE THEIR LIVING DEALING IN CONTRABAND ARE GOING TO BE DETERRED BY A WAITING PERIOD AND POLICE BACKGROUND CHECK FOR THE PURCHASE OF FIREARMS. AT THE SAME TIME, THE EVIDENCE FROM STATES WITH SUCH SYSTEMS IS CLEAR:

ONLY LAW-ABIDING INDIVIDUALS VOLUNTARILY SUBJECT THEMSELVES TO POLICE BACKGROUND CHECKS.

MR.CHAIRMAN, THE MESSAGE FROM OUR MEMBERS AROUND THE NATION IS SIMILARLY CLEAR: THE RIGHTS OF LAW-ABIDING CITIZENS MUST NOT BE THE FIRST CASUALTY IN THE WAR ON DRUGS.

Doug Coloupe
ILA
5.1.2

120 Hubler Road
State College, PA 16801
July 20, 1988

Hon. Arlen Specter
331 Hart Senate Office Building
Washington, DC 20510

Dear Senator Specter:

As a scientist who has been studying the socioeconomics of firearms and firearm legislation for the past 28 years, I would like to comment on S. 466, Senator Metzenbaum's "waiting period bill." This is sometimes referred to euphemistically as the "Brady bill."

Waiting periods have been included in a number of studies dealing with the misuse of firearms and the effects of various firearm laws. While their existence may make some people feel better, waiting periods have been found to have no statistically significant effect on crime rates. The prime reason seems to be, as the NRA is fond of pointing out, that persons bent on firearm misuse simply do not obtain their guns through normal commercial channels.

As you know, in Pennsylvania we have had for many years a 48-hour waiting period. Obviously, this is not sufficient time for the Pennsylvania State Police to run their criminal history record check of the handgun purchaser. Ordinarily, the purchaser has been back to the retailer and picked up the gun before the state police are able to notify the dealer of any criminal convictions. One might assume that the result is numerous criminals obtaining handguns with which to commit violent crimes. Actually, the result is nothing of the sort. The state police are not concerned as to how long the waiting period is as they find so few would-be purchasers with crimes-of-violence convictions anyway. The average is something like two a year. In these cases, a trooper is sent to pick up the gun. The purchaser always surrenders same when informed that he is ineligible to purchase -- there has never been any problem in this regard -- he had no criminal intent, simply did not realize that he was not eligible to purchase because of some probably long-ago conviction.

This situation has resulted in some state police staff advocating that the Uniform Firearms Act be changed to eliminate the initial application-to-purchase paper work. Only the record of sale would be subject to a criminal history record check. The result would be the same as it is now -- should someone with a criminal background purchase a handgun, the state police would assign a trooper to retrieve it. If appropriate, charges could be placed against the purchaser for false swearing on the record of sale. Administrative costs to the Pennsylvania State Police

would be substantially reduced. The concept here is relevant to the current debate over waiting periods. One should be aware that it is not necessary to have a waiting period in order to conduct effective criminal history record checks on handgun purchasers.

Equally interesting is the track record of handgun purchasers in the years following their purchase. In this connection, a very important program was begun by the Pennsylvania State Police on January 1, 1982. This involved the microfilming and automated indexing of all "Record of Sale of Firearm" submitted to the PSP. A conversion process of previously submitted records, which date back to 1931, commenced at the same time and continues to be an ongoing effort. To date, all such records of firearms purchased by individuals with a last name beginning with a letter A through O have not only been microfilmed and indexed but subjected to a criminal history record check. About 1,500,000 purchasers have now been processed in this exercise.

The result? Only 207 persons, over a period of 57 years, were determined to have possibly committed a crime that would make them ineligible to possess a firearm under Pennsylvania law since they made their purchase. After investigation of 109 of these cases, charges were brought against 14 individuals, of which three have been convicted. Two cases were turned over to the Bureau of Alcohol, Tobacco and Firearms. Investigations in the remaining 98 cases are continuing.

These data not only show that the waiting period and police check are extremely inefficient and ineffective crime-control measures but also refute the claim of Handgun Control, Inc. that the law-abiding gun owner of today is likely to become the emotionally distraught or intoxicated murderer of tomorrow.

For the past several years, I have been collecting data on the misbehavior of persons holding licenses to carry firearms concealed on the person or in a vehicle pursuant to the provisions of the Uniform Firearms Act. The results of this are perhaps no less amazing than the above. To date, I have been able to document only a single instance of any license holder committing an act of violence with a firearm, this since 1934. License revocations are few and far between. They are invariably for trespasses such as DUI or public drunkenness; they apparently are never for commission of violent crimes, simply because these people do not commit such crimes.

The point of all this is simply, once again, that persons prone to firearm misuse and criminal conduct do not become involved in compliance with firearm regulatory laws as do law-abiding citizens. Thus, the cost effectiveness of such regulatory laws as crime control measures is very low. Any economist looking at the various crime control programs available today would put such laws way down toward the bottom of the list.

Speaking of us economists, we are always interested in the indirect costs chargeable to a particular endeavor. While they receive less attention than direct cost items such as the criminal history record check,

they are nonetheless real. In this instance, there are the costs borne by the handgun purchaser in having to make a second trip to the gun shop and the costs borne by the firearm dealer in having to complete additional forms and spend additional time on the second contact with the customer. These require at least a couple of hours and perhaps twenty miles on the automobile for the purchaser and another 30 minutes of clerk time for the gun shop. Without going into a detailed cost/benefit analysis here, suffice it to estimate that for some 3 million handgun transfers per year in the U.S., the indirect costs might reasonably be put at $100 million. Actually, if all indirect costs were formally analyzed, the figure would almost certainly be higher.

In some jurisdictions, such as New Jersey, licensing authorities look for any little thing that might be used to justify denying a person's application to purchase a handgun. That this has led to serious abuses over the years is so but another subject. The point to be made is that finding something in a person's background that enables the authorities to deny an application to purchase does not mean, as Handgun Control, Inc. trumpets, that a crime has been prevented. In practice, no crime has been prevented. The person applying to purchase, whether something was found in his background to justify denial or not, had no intention of misusing the firearm he wished to purchase. It's the same story here -- folks who go through, or even attempt to go through, normal commercial channels to purchase are not the same people who misuse firearms for criminal purposes.

What about the waiting period constituting an effective "cooling off" period for people who, being angry over some particular person or event, would rush down to the local gun shop, buy a handgun and then go out and shoot someone? Here again, there is no evidence that the supposed result obtains. Gun shops are not open during the time of day that this emotional type of crime is prone to occur. Nor are these crimes committed by the people who make their purchases at gun shops; the perpetrators invariably obtain their firearms second hand.

I would respectfully suggest that waiting periods are not something in which the federal government should become involved. Surely, they fall under the general police power, reserved to the states under the federal constitution. If an individual state sees fit to waste their taxpayers' money on waiting periods in order to solve a perceived political problem, that would seem to be its prerogative. Certainly, a mandated federal waiting period would add nothing to the effectiveness of our firearm laws here in Pennsylvania. As for me, I'd rather not have my federal income tax squandered in this manner.

With about 70 million handguns in private hands in the U.S. and with firearms in about 60% of U.S. homes, it takes a gullible person indeed to believe that anyone who wishes to acquire a firearm for an illegal purpose cannot readily do so. Moreover, to think that a waiting period would prevent that person from acquiring a handgun is even more credulous. For years, Handgun Control, Inc. and its supporters admitted this. They said that, while the waiting period would not necessarily prevent the

criminal from acquiring a handgun, it would at least make it more troublesome. One might ask what is the justification for the costs of waiting periods, just to make acquisition more trouble for the purchaser, when the end result is admittedly the same, with or without the waiting period.

Rather than a federal waiting period, what is needed is enforcement, now lacking, of that provision of federal firearm law that precludes possession of any firearm by certain classes of persons, including felons. Thousands of these offenders, many habitual criminals, are arrested by state and local law enforcement officials annually but federal charges are almost never brought against them for illegal possession of firearms.

It is obvious that the folks pushing the "Brady bill" are more interested in another foot in the door for more restrictive gun laws than they are in actually doing anything about firearm misuse. If they can succeed in establishing an expansion of the federal gun control bureaucracy to oversee waiting periods and criminal history record checks of handgun purchasers, they are well on their way to attaining still more of their anti-gun-owner objectives at the federal level. I hope that you will have nothing to do with this effort. There are about two million law-abiding firearm owners in the Commonwealth of Pennsylvania and they deserve better.

Thank you.

With kindest regards,

Alan S. Krug

Alan S. Krug, Ph.D.

ASK:ekg

P.S. Speaking of New Jersey, I notice that your fellow Philadelphian Robert Borski is embracing the HCI myth of that state's waiting period preventing 10,000 felons (a nice, round figure) from acquiring a handgun since 1969 (the figure had been "33,000" up until this year; someone must have experienced a slight pang of guilt). Anyone who would believe that would believe that the moon is made of the proverbial green cheese. One look at the Pennsylvania State Police data discussed above should expose the New Jersey hoax for what it is. Actually, what the 10,000 figure more accurately represents is law-abiding citizens who have been arbitrarily denied their right to lawfully purchase a firearm because a police official decided they did not have "sufficient need" or that their purchase would "not be in the public interest." The New Jersey Legislature recently held hearings on the abuses of the New Jersey firearm laws that have been occurring there.

STATEMENT OF JAMES JAY BAKER

DIRECTOR

FEDERAL AFFAIRS

INSTITUTE FOR LEGISLATIVE ACTION

NATIONAL RIFLE ASSOCIATION OF AMERICA

ON

LEGISLATION TO AMEND THE RACKETEER INFLUENCED CORRUPT ORGANIZATIONS ACT - FIREARMS OFFENSES PROPOSED AS RICO PREDICATES

S. 1523

BEFORE THE

U.S. SENATE COMMITTEE ON THE JUDICIARY

MAY 19, 1988

Mr. Chairman:

The National Rifle Association of America, appreciates the opportunity to present testimony in opposition to proposals to include firearms offenses among the list of RICO predicates in the latest draft of S. 1523, currently pending in mark up and being debated before the U.S. Senate Committee on the Judiciary. The proposed amendment is unnecessary, inappropriate, ill conceived and contrary to the best interests of those who must enforce this organized crime statute and those who must prosecute organized crime figures.

Amendments to RICO have been pending for nearly three years, yet an eleventh-hour amendment to include firearms offenses among the list of predicate offenses in S. 1523 was just proposed four weeks ago in a draft circulated to Committee members only three days prior to the first day of mark up by the Senate Judiciary Committee. To our knowledge, this amendment was never even discussed at any prior RICO hearings over the past three years. Surely, today's hearing, scheduled in haste, impedes careful consideration, careful deliberation and a thorough opportunity for all interested parties to testify either personally or to present written testimony on this controversial proposal.

In light of the decision to postpone the mark up of RICO, S. 1523, and call this hearing, we propose the sponsor of the legislation withdraw his secondary amendment to Senator Dennis DeConcini's amendment to delete the firearms offenses from the list of predicate offenses in RICO and ask unanimous consent that Senator DeConcini's amendment be accepted. Once the controversial firearms offenses are deleted, the Senate Judiciary Committee can swiftly return to the business of the day -- Racketeer Influenced and Corrupt Organizations Amendments.

For the benefit of those unware of the Chairman's proposal, note at Section 5(B) of S. 1523, Title 18 U.S.C., Section 1961 (1) would be amended by inserting before ", section 1084" the following: "sections 922 and 924, except for subsection (m) of section 922 relating to Federal firearm laws . . . ."

The effect of this seemingly innocuous line would largely be to repeal two major provisions of the Firearms Owners' Protection Act, Public Law 99-308. As you will remember, seven long years of thorough and careful debate and examination resulted in that comprehensive legislation. Countless hours of Senate hearings and debate produced a 79 to 15 Senate vote to reform federal firearm laws. This amendment subverts the overwhelmingly expressed intent of the Senate in that vote. In addition, this amendment subverts the overwhelmingly expressed intent of the House in that vote. The House voted 292-130 to reform federal firearms laws.

First, by making all GCA '68 offenses, except record-keeping violations, predicate offenses for RICO actions, the Senate Judiciary Committee would effectively be drastically revising the standard of proof required of the government in firearms cases since civil actions may be brought for RICO violations. Under the RICO provisions, as amended by this legislation, the elements of what is essentially a criminal case brought under GCA '68 would only require proof by a preponderance of evidence. As you know, criminal violations of GCA '68 currently must be proved beyond a reasonable doubt.

Second, this provision could undo one of the major accomplishments achieved with the Firearms Owners' Protection Act. Congress deliberated extensively about which offenses would require a "willful" standard and which would only require a "knowing" standard. This provision would result in no "scienter" standard at all for criminal and civil actions, and could therefore result in judgments under the RICO statute where there was no intent to violate the law.

Third, this provision would have a significant effect on seizures of private property by federal agents. As you know, property allegedly involved in RICO violations can be seized by the government and held until the case is resolved. Such proceedings can take years. This provision would virtually repeal a major reform of GCA '68 enacted by P.L. 99-308, in which Congress saw fit to restrict seizures of property under GCA '68 to only "firearms or ammunition involved in or used in" any violations. Yet RICO-based seizures can encompass all property that the government on its own, or at the behest of some private entity, alleges to be the proceeds of the alleged criminal enterprise. Further, the RICO Act itself dictates in section 904 that its provisions are to be ". . . liberally construed . . . ."

Fourth, the provisions of RICO allow suits to be brought by private individuals under the statute. This would mean that individuals or groups acting as private "attorneys general" opposed to the lawful ownership of firearms might easily run large numbers of legitimate firearms dealers and hobbyists out of business through repeated and publicized filings of lawsuits alleging a criminal enterprise and seeking treble damages.

Mr. Chairman, there can be no valid arguments for the Senate Judiciary Committee to reverse judgments made by nearly 80 U.S. Senators and nearly 300 U.S. Congressmen after seven long years of debate and analysis. In addition, the ink is barely dry on the final federal regulations, published just less than two months ago, for the Firearms Owners Protection Act. Coincidentally, FOPA was signed into law exactly two years ago today.

The Firearms Owners Protection Act already carries heavy criminal penalties for those who misuse firearms in the commission of crimes of violence, for those who sell to felons or any prohibited persons, for those who traffick in any stolen firearms or for those who unlawfully possess or transfer machine guns. Nor can prohibited persons ship, transport, possess or receive any firearm which has been shipped or transported in interstate or foreign commerce without incurring heavy criminal penalties. These penalties also apply to individuals employed by prohibited persons who, with knowledge, engage in these same acts. Civil RICO is a law enforcement tool against white collar crime -- now is not the time to dilute it. The nation's law abiding gun owners did not take one step forward with the Firearms Owners Protection Act in order to take two steps backward with this proposed RICO firearms offenses amendment.

Mr. Chairman, the NRA would be interested in learning what evidence the Department of Justice can provide for the record on their experience with organized crime relative to the proposed firearms offenses amendment.

For the record, the attached correspondence between the Department of Justice and Senators Dennis DeConcini and Howard Metzenbaum, dated April 14, 1988 and May 9, 1988, in summary says the Department of Justice strongly opposes the inclusion of firearms crimes to the RICO law.

In conclusion, the National Rifle Association strongly urges the Judiciary Committee to oppose this provision of S. 1523 and support the amendment offered by Senator DeConcini to strike this specific language from S. 1523.

x x x

ATTACHMENTS

TMB:JEP:CWCdjr
S. 1523

U.S. Department of Justice

Office of Legislative Affairs

Chron

Office of the Assistant Attorney General

Washington, D.C. 20530

APR 14 1988

Honorable Dennis DeConcini
United States Senate
Washington, D. C. 20510

Dear Senator DeConcini:

Your staff has inquired as to our views with respect to the proposal, in connection with S. 1523, to add a series of new predicate offenses to the federal RICO statute. We have reviewed the series of proposed new predicate offenses and believe that in three instances the proposed expansion of RICO predicates are seriously ill-advised.

More specifically, the Criminal Division prosecutors most familiar with the RICO statute oppose the suggested inclusion of firearms crimes, murder, and 18 U.S.C. 1952A to the RICO law. Our objections to these provisions are that:

(1) they are unnecessary -- the offenses already carry heavy criminal penalties; and

(2) they dilute the RICO Act almost to the point of converting it from a special organized crime statute into a "Federal Serious Crime Act" -- in short, the amendments would make virtually any gun crime or murder into a RICO offense.

For these reasons, the Department of Justice strongly recommends against creation of these three new predicate offenses. At the very least, any such dramatic expansion of the RICO statute should, in our view, receive careful consideration and public hearings. The RICO law is too important to be radically altered without careful deliberation and an opportunity for all interested parties to comment.

Sincerely,

Thomas M. Boyd
Acting Assistant Attorney General

cc: DAG, CRIM, OLP, CIV, Greg Walden

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 9, 1988

Honorable Howard Metzenbaum
Chairman
Subcommittee on Antitrust, Monopolies and
Business Rights
Committee on the Judiciary
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This responds to your letter of April 26, 1988, to the Attorney General regarding S. 1523, the RICO reform bill. In answer to your specific question as to the Department's "official" position on proposals to include firearms offenses in the list of RICO predicates, it remains as set out in my letter of April 14, 1988, copy enclosed, to Senator DeConcini.

Your letter suggests an inconsistency between our position on the proposed expansions of RICO predicates now before the Committee and the testimony of former Assistant Attorney General William F. Weld. As wire and mail fraud (18 U.S.C. 1341 and 1343) have long been RICO predicates, we have indicated that other federal fraud statutes should be included as well. We do, however, object to the notion that any offense which might be committed in aid of racketeering should automatically be added to the list of RICO predicates. Put simply, we believe that great care is required before altering the law.

I should note in this regard that numerous efforts have been made over the years to render the RICO law impotent. In addition, there was a challenge to the RICO law mounted in the late 1970s by state and local law enforcement officials who viewed it as encroaching upon areas traditionally within their jurisdiction. Having successfully resisted repeated attacks upon the RICO statute and having suffered through numerous hostile House and Senate oversight hearings inquiring into alleged abuses of the RICO law by federal prosecutors, I am sure you will understand why we continue to urge against hasty extension of RICO to embrace a variety of criminal statutes.

An argument could be made that the list of RICO predicates set out at 18 U.S.C. 1961 should be struck and the words "any federal crime" substituted in lieu thereof. Certainly, there are few federal criminal laws which have not been violated by organized crime syndicates. Such an expansion of RICO, though, would be totally destructive of the unique character of this statute and of the special place it occupies in federal law after eighteen years of prudent and highly effective use by this Department. While we support some expansion of RICO predicates as mentioned above, we are concerned about the continued dilution of perhaps the most important criminal statute in the Federal Criminal Code.

On the larger issue of civil RICO reform, perhaps I should reiterate that our preferred approach would be to have private civil actions limited to cases where a prior criminal conviction has been secured; this is the approach we proposed in July of 1986. However, we recognize that there is little support for our proposed approach to private civil RICO and since we do not wish to obstruct the passage of consensus legislation in this area, we have strived to avoid jeopardizing what appeared to be a fragile compromise worked out between business and consumer groups.

Notwithstanding our desire to adhere to a position of neutrality on reform of private civil RICO, some of the proposals to expand civil RICO by embracing personal injuries and the proposal to limit what we had understood to be an agreed retroactivity provision, appear at odds with the basic thrust of S. 1523: to narrow civil RICO in order to minimize abuses of the statute by private litigants.

We feel compelled, therefore, to reinforce the views set forth in my letter of April 14 regarding expansions to the current list of RICO predicates. Further, we will resist vigorously any modifications to criminal RICO provisions which, in our view, would undermine or in any other fashion jeopardize the effectiveness of the RICO statute. For example, we cannot accept:

(1) the language at page 2, lines 13 and 14 of the draft bill you forwarded authorizing federal suits to be brought by the Attorney General [or other legal officer authorized to sue]"; the bracketed langauge suggests that a suit can be brought on behalf of the United States without the approval of the Attorney General; and

(2) the wording of the affirmative defense set out beginning at page 8, line 13, which would apparently apply to actions brought by the United States; our understanding was that this

affirmative defense was to apply only to suits brought by private litigants. To make it applicable to suits on behalf of the United States would add a new hurdle to a successful federal RICO action when everything else in the bill is intended to facilitate governmental civil RICO actions.

We appreciate this opportunity to comment officially on this legislation.

Sincerely,

Thomas M. Boyd
Acting Assistant Attorney General

cc: Honorable Strom Thurmond
Ranking Minority Member

Senator METZENBAUM. This committee will stand a recess. I have a vote on.

[Recess.]

Senator METZENBAUM. The next witness is David Kopel, former assistant district attorney for the city of Manhattan. Please proceed, Mr. Kopel.

STATEMENT OF DAVID KOPEL

Mr. KOPEL. Thank you very much, Mr. Chairman.

As the last witness finished testifying, you stated that you did not feel gun ownership was a civil liberties issue. The Constitution, which I would also like to hold up—you held up some guns earlier in the testimony—does say that it is a civil liberties issue. The Constitution says there is a right to bear arms, not a privilege that is dependent on police approval.

As a matter of fact, this very subcommittee investigated the issue and found that the founding fathers absolutely intended that the right to bear arms was something that belonged to individual citizens as part of their militia role, which included their right to self-defense. That is the report by this subcommittee written 5 years ago. That was before you were on the subcommittee. I am not sure if you are familiar with it.

Senator METZENBAUM. Mr. Kopel, I suggest you proceed with your testimony because I do not deny the right of an individual to own a gun, nor do I deny the fact that the constitutional rights of individuals, nor do I claim that it is a violation of somebody's civil liberties to put it the other way around. Nor do I think it would be a violation of their civil rights to take away their guns. I am not proposing that.

Mr. KOPEL. Thank you, Senator.

Every single study done of waiting periods has found them to be absolutely useless in curbing crime. Professor Matthew DeZee of Florida State University says "I firmly believe that more restrictive legislation is necessary to reduce the volume of gun crime" has studied waiting periods and found them to be absolutely ineffectual. Professors Joseph Magaddino and Marshall Medoff of California State University have come to exactly the same conclusion.

Another anti-gun scholar, Duke University's Philip Cook explains:

> Ineligible people are less likely to submit to the screening process than are eligible people because these people find ways of circumventing the screening system entirely.

Cook concludes:

> There has been no convincing proof that a police check on handgun buyers reduces violent crime rates.

When the Senate Judiciary Committee investigated this very issue, the committee found no evidence that waiting periods affect crime.

Waiting periods have been in effect for over 50 years in some states. Yet after all this time, there is not one single criminological study ever published which shows that waiting periods have the slightest beneficial effect.

The unanimous opinion of the criminologists comports with common sense. Said Willis Ross, a former police chief and currently lobbyist for the Florida Police Chiefs Association, "I think any working policeman will tell you that the crooks already have guns. If a criminal fills out an application and sends his application, he is the biggest, dumbest crook I have ever seen."

In fact, the testimony by the police officer from Kansas City comes to exactly the same conclusion. He says the drug dealers get their guns by theft, by trade, or by having legal surrogate buyers, who your bill certainly could not stop because they are legal buyers, buy the guns for them.

I think it is quite untrue to claim, as the police foundation representative did, that these police witnesses we have had here today represent the sentiment of the nation's police. In 1987, the Florida legislature repealed a host of local waiting periods, and that repeal took place thanks to the lobbying of the Florida Police Chiefs Association. In a national survey of all the nation's chiefs of police and sheriffs, 59 percent said that a national seven day waiting period would not be helpful.

More fundamentally, the opinion of police chiefs is not the arbiter of our constitutional rights. Police chiefs criticize Miranda, they criticize grand juries, they criticize the exclusionary rule. Some of them criticize the second amendment. I do not think their opinion determines our constitutional rights.

The effect of this legislation will be to reduce crime fighting resources because it is going to put police in the position of sorting through mountains and mountains of paper work filled out by honest citizens looking in a haystack of applications for needles left by the very dumbest crooks in this nation.

I think those police hours would be far better spent out on patrol, on anti-crime work, and behind a desk looking at the records of honest citizens.

It is claimed that guns from lax states leak into states that have waiting periods. But look at machine guns. Drug dealers have all the machine guns they want, yet for any citizen anywhere in this country to obtain a machine gun, he has to obtain a Federal license that takes him 3 months, and he has to be fingerprinted. That is way more than your bill requires. Yet drug dealers do not have any trouble getting machine guns.

If they do not have trouble getting machine guns, how is your bill which is far less powerful, going to stop them from getting handguns.

Why are some of these police officials here in favor of waiting periods? Some of them simply take a dim view of all citizen's rights, including the right to bear arms. It is no surprise to hear of an organization like the International Association of Chiefs of Police speak out against citizen's rights. That association welcomes into its membership police chiefs from nations like Ethiopia, South Africa, and Iraq.

A few years ago, the McClure-Volkmer bill was under consideration and some of these same police organizations, including the Police Foundation, warned what a threat that bill was to law officer's lives. That bill passed anyway and, as it turns out, no law offi-

cer has been endangered by allowing a Pennsylvania hunter to travel to Maine without getting a New York gun license.

I think another reason the police chiefs favor this proposal is that police chiefs, like other administrators of large government officers, seek to expand their official power. From the prospective of a police administrator who may never have served in street patrol, more power means more officers doing administrative tasks. It is the same mentality that leads to the creation of paperwork empires in the Pentagon and the Hubert Humphrey Building.

By the way, you said that your bill does not involve gun registration. If it does not involve gun registration, I would like to know what the purpose of having the gun applicant hand in the gun's identification serial number and the gun's make and model serves? Those certainly are not needed for any kind of background check.

Another, I think, deception about this bill is the claim that it is going to be cost free because police departments do not have to do a background check. Handgun Control, the bill's prime sponsor, has already announced it is going to start suing police departments that do not do the background check.

I would finally like to remind you that this is not a kind of situation where we can trust police departments to enforce the law appropriately in terms of civil liberties. The St. Louis police have denied permits to homosexuals, non-voters, and wives who lack their husband's permission. New Jersey law requires that police make decisions on gun applications within 30 days. Delays of 90 days are routine and some applications are delayed for years for no valid reason.

The police department of Gary, Indiana, has simply stopped handing out application forms. The police department of New York has refused to issue legally required licenses, even when twice commanded by appeals courts to do so. The department has also refused to even hand out blank application forms.

I will complete my testimony there.

Senator METZENBAUM. Your testimony will be included in the record.

Mr. KOPEL. I would also like to offer into the record this report on gun crime by the CATO Institute.

Senator METZENBAUM. We will accept—is that the one that you did?

Mr. KOPEL. Yes, it is.

Senator METZENBAUM. I am not sure that we want to just include in the record that material that many of our witnesses submit. We are willing to include your statement and we will take a look at it and we will try to put it in somewhere as an addendum.

In that piece, I might say, you say the following about waiting periods:

> The image of a murderously enraged person leaving home, driving to a gun store, finding one open after 10 p.m. when most crimes of passion occur, buying a weapon and driving home to kill is a little silly.

I wonder if you would think it so silly if you had heard the testimony we had last June about the 16-year-old boy who testified that his father was murdered when one of the father's employees re-

turned from purchasing a handgun during the office lunch hour, and then went on to kill his father.

We also heard about a convicted felon and a former mental patient who bought a handgun just outside of Cleveland, and within 45 minutes opened fire on the Cleveland Public Library. One woman died and two were injured. John Hinckley would not have been able to buy the gun that he used to attempt to assassinate the President and wreak permanent damage on Jim Brady if there had been a one week waiting period.

Do you really think those cases are all silly?

Mr. KOPEL. First of all, I would like to respond to the Hinckley case, since that is the one that has been the subject of your organization, Handgun Control's, national publicity campaign.

Senator METZENBAUM. It is not my organization.

Mr. KOPEL. They are the ones who authored the Brady Amendment, which is also your bill. In any case, they are the ones advertising for that.

I think that campaign is, in fact, a fraud and I think it is ridiculous to claim that this bill would have prevented the assassination attempt. John Hinckley already owned six other handguns before he bought the gun in question, that he used. It is claimed that he lied on his application form. What he did was he bought two handguns, and Federal law requires a person who does so to fill out a statement just notifying the Bureau of Alcohol, Tobacco and Firearms that he is buying such a gun.

The Bureau of Alcohol, Tobacco and Firearms had that form and they had all the opportunity in the world to run a background check on him.

Senator METZENBAUM. You are not answering my question, Mr. Kopel. I asked you only do you think all of those cases were silly?

Mr. KOPEL. I think the Hinckley case is patently ridiculous. My statement goes into it in some more detail. I do not think it would have had the slightest effect.

The other thing is, you can always cite a couple of anecdotes where someone buys a gun and uses it immediately after, but in the overwhelming majority of situations that is not true. The overwhelming majority of gun murders, the gun has been around for quite a long time.

I do not think you can just pull out a couple of anecdotes and use that to chop away at a constitutional right.

Senator METZENBAUM. Thank you very much, Mr. Kopel. Mr. Kopel, I am not sure that I know what you are doing now. I know that at one time you served as——

Mr. KOPEL. I am a lawyer in Colorado now.

Senator METZENBAUM. In Colorado?

Mr. KOPEL. Yes.

[The prepared statement of David Kopel follows:]

STATEMENT OF DAVID B. KOPEL

ON

S. 466 & H.R. 975 "THE BRADY AMENDMENT"

AND

S. 1523 LEGISLATION TO AMEND THE RACKETEER INFLUENCED CORRUPT ORGANIZATIONS ACT -- FIREARMS OFFENSES PROPOSED AS RICO PREDICATES

BEFORE THE

U.S. SENATE SUBCOMMITTEE ON THE CONSTITUTION

OF THE COMMITTEE ON THE JUDICIARY

AUGUST 2, 1988

Russell Senate Office Building

David B. Kopel served as an assistant district attorney in Manhattan from 1986 until May 1988. He is the author of Trust the People: The Case Against Gun Control (CATO Institute, July 1988); Rowan Case and the Need to Bear Arms (Wall Street Journal, June 24, 1988); Foreign Gun Control Through American Eyes (presented at the Popular Culture Association Conference, Montreal, March 1987); and Media Bias in Coverage of Gun Control: The Press Evaluates the Popular Culture (Popular Culture Conference, New Orleans, March 1988).

Mr. Kopel graduated 5th in his class from the University of Michigan Law School, where he served on the Michigan Law Review from 1983 to 1985. In 1982, he graduated from Brown University, with highest honors. His thesis "The Highbrow in American Politics -- Arthur M. Schlesinger Jr. and the Role of the Intellectual in Politics" won the National Historical Society Prize for best history thesis.

Mr. Kopel's other writing includes When American Aid Brings Food for Naught (Newsday, April 7, 1986), and Legal Education and the Reproduction of Hierarchy (82 Michigan Law Rev. 961), as well as a bi-weekly political column for the Brooklyn Free Press. He co-authored And Justice For Some: The Reagan Administration and the Rule of Law in America, a report released by the National Association of Law Students and Professors for Responsible Government, in October 1984.

He has been listed in "Who's Who in American Lawyers," "Who's Who in American Law Students," and "Outstanding Young Men of America."

Mr. Kopel may be contacted at (303) 333-6723.

Mr. Chairman:

Good afternoon. Thank you for the opportunity to appear before this Subcommittee.

The Subcommittee on the Constitution is the proper place for gun legislation to be heard. During the 97th Congress, this Subcommittee investigated the historical roots of the Second Amendment. The Subcommittee unanimously concluded that the Second Amendment protects an individual right to bear arms.[1] The Second Amendment protects what Josiah Quincy called "a well-regulated militia composed of the freeholder, citizen and husbandman, who take up their arms to preserve their property as individuals, and their rights as freemen."[2]

Both proposals under discussion today -- the waiting period and the RICO amendment -- are offensive to the Constitution. Not only do these proposals violate the Second Amendment's right to bear arms, they will violate the Fifth Amendment's guarantee of due process of law, and the Tenth Amendment's guarantee against federal interference with state matters.

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1. Senate Committee on the Judiciary, Subcommittee on the Constitution, The Right to Keep and Bear Arms, 97th Congress, 2d sess., Senate Doc. 2807 (February 1982).

2. Quoted in Clinton Rossiter, The Political Thought of the American Revolution (New York: Harcourt, Brace and World, 1953), pp. 126-27.

Further, the case for these proposals is based on deception, misstatement, and outright lies. A moment of common sense analysis reveals how utterly useless both these proposals are in genuine crime-fighting; their only real utility is to increase police and government control over law-abiding gun owners.

WAITING PERIODS

Citizens should not have to wait for police permission to exercise their Constitutional rights. Reporters who wish to file stories, even about national security matters, should not be required to pre-clear them with government officials. Women who choose to exercise their right to abortion should not have to submit to a waiting period. Citizens who wish to protect themselves should not have to wait to receive police permission.

Some people wonder why anyone would object to a seven day waiting period. Seven days is too long for a woman whose ex-boyfriend is threatening to come over and batter her. Seven days is too long for families when a burglar strikes three homes in a neighborhood in one week, and may strike that night. Moreover, the imposition of waiting period changes the Constitutional right to bear arms into a mere police-granted privilege.

A NATIONAL WAITING PERIOD WOULD NOT REDUCE GUN CRIME

Every single study of waiting periods has found them to be absolutely useless in stopping gun crime. Professor Matthew DeZee states "I firmly believe that more restrictive legislation

is necessary to reduce the volume of gun crime." Yet his study of waiting period laws showed them to have not the slightest effect.[3] Professors Joseph P. Magaddino and Marshall H. Medoff, both of California State University, Long Beach, came to exactly the same conclusion.[4] Another anti-gun scholar, Duke University's Philip Cook explains: "ineligible people are less likely to submit to the screening process than are eligible people . . . because these people find ways of circumventing the screening system entirely." Cook concludes: "[T]here has been no convincing proof that a police check on handgun buyers reduces violent crime rates."[5] When the Senate Judiciary Committee investigated the issue, the Committee found no evidence that waiting periods affect crime.[6]

Waiting periods have existed in some states for over half a century. Yet after all this time, there is not a single criminological study ever published which shows waiting periods to have any beneficial impact.

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3. Matthew DeZee, Gun Control Legislation: Impact and Ideology, 5 Law & Policy Quarterly (July 1983), pp. 363-79.

4. An Empirical Analysis of Federal and State Firearms Control Laws, in Firearms and Violence: Issues of Public Policy (Pacific Institute, San Francisco, 1984); Homicides, Robberies and State "Cooling-Off" Schemes, in Why Handgun Bans Can't Work (Bellevue, Wash: Second Amendment Foundation, 1982), pp. 101-12.

5. Philip J. Cook and David Blose, The Effect of Gun Availability on Violent Crime Patterns, 455 Annals of the American Academy of Political and Social Science (May 1981).

6. Report on the Federal Firearm Owners Protection Act, S. Rep. no 3476, 97th Cong., 2d sess. (1982), pp. 51-52.

The unanimous studies by the criminologists comport with common sense. Said Willis Ross, a former police chief, and currently lobbyist for the Florida Police Chiefs Association: "I think any working policeman will tell you that the crooks already have guns. If a criminal fills out an application and sends his application. . . he's the biggest, dumbest crook I've ever seen."

As a National Institute of Justice study concluded, felons get guns on the street, or from friends, or they steal them. They do not walk into stores, and fill out background check forms.[7]

Mrs. Sarah Brady, the nation's most prominent anti-gun lobbyist, claims that if the waiting period had been in effect, John Hinckley would not have shot her husband and President Reagan. As part of the national media campaign in favor of the waiting period, she asserts that Hinckley "lied on his purchase application. Given time, the police could have caught the lie and put him in jail."[8]

That Mrs. Brady and HCI use such a demonstrably false anecdote shows how weak their case really is. When asked for

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7. James Wright and Peter Rossi, Armed and Considered Dangerous: A Survey of Felons and Their Firearms (New York: Aldine, 1986), p. 185. According to the study, 5/6 of the prisoners did not obtain their handguns from a retail outlet. Of those that did use a retail source, many used a legal surrogate buyer, such as a girlfriend.

8. Advertisement, "A $29 handgun shattered my family's life." The New Republic, July 18, 1988, inside front cover.

identification by the gun dealer, Hinckley offered his valid Texas driver's license. The address on the license was Hinckley's last valid address, a rooming house in Lubbock. (At the time of the gun purchase, he had no permanent address.) For the police to find the so-called "lie" would have required them to send an officer to check Hinckley's listed address, and determine that he no longer lived there. Since many police departments do not have the time to visit the scene of residential burglaries, it is rather absurd to expect them to have the time to visit the home of every single prospective handgun buyer.

Moreover, under the Brady Amendment, the police would not be verifying Hinckley's address as reported on the federal multiple handgun purchase form. They would only be conducting a background check, and would have found that Hinckley had no criminal or publicly available record of mental illness. [10]

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10. Mrs. Brady also campaigns against inexpensive, small calibre handguns. Had John Hinckley not been able to buy that low-calibre $29 handgun, he probably would have used one of the more powerful, .38 calibre guns that he legally owned. If so, President Reagan and Mr. Brady would almost certainly be dead; for .38 calibre attacks are almost twice as likely to kill as .22 calibre attacks. Franklin Zimring, The Medium is the Message: Firearms Calibre as a Determinant of Death from Legal Assault, Journal of Legal Studies (Jan. 1972).

Another inaccuracy in the campaign for a national waiting period is the claim that it will help disarm drug dealers. It is simply preposterous to imagine that any kind of gun legislation, including a waiting period, would have the slightest impact on drug dealers.

Drug dealers obviously cannot count on the police or the courts for protection from violence. Because of this, and because they are a valuable robbery target, it would virtually be suicide for them not to carry a gun.

In addition, drug dealers cannot use normal legal and social commercial dispute resolution mechanisms. Like the gangsters of alcohol prohibition days, drug dealers need guns to protect their business's income and territory. Thus, many drug dealers must own a gun for their lives and their livelihood.

No matter how scarce guns become for civilians, there will always be one for a criminal who can pay enough. Street handguns now sell for less than $100. If the price went up to $2,000, dealers would still buy them, because dealers would have to. Spending a few hours' or days' profits on self-protection is the only logical decision for a dealer. Can anyone really believe that an individual who buys pure heroin by the ounce, who transacts in the highly illegal chemicals used to produce amphetamine, or who sells cocaine on the toughest street-corners in the worst neighborhoods will not know where to buy an illegal gun?

POLICE TESTIMONY

Several high-ranking police officials, purporting to represent the nation's police, have stated that a waiting period would be beneficial. That testimony is highly dubious.

First of all, it is simply untrue that these police bureaucrats represent the sentiment of the nations's police. In 1987, the Florida Legislature repealed a host of local waiting periods, and that repeal took place thanks to the lobbying of the Florida Police Chiefs Association. In a national survey of all the nation's chiefs of police and sheriffs, 59% percent said that a national 7 day waiting period would not be helpful.[11]

More fundamentally, the opinion of police chiefs is not the arbiter of our Constitutional rights. Some police executives criticize the exclusionary rule; they claim that a strong fourth amendment causes crime. Some police executives criticize the grand jury system, and claim that a strong fifth amendment causes crime. Some criticize the Miranda decision, and claim that a strong sixth amendment causes crime. The police executives here today say that a strong second amendment causes crime. In every case the executives are wrong.

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11. The National Association of Chiefs of Police sent a questionaire to the 21,000 chiefs of police and sheriffs in the United States; the data is based on those who responded to the questionaire. Clearly the methodology is not perfect, but the survey is the most extensive available. Handgun Control Inc. cites a poll using similar methodology in its brochure What You Should Know About the Brady Bill (poll of 200 member Police Executive Research Forum).

In fact, the actual effect of this legislation will be to decrease crime-fighting resources, and thereby increase crime. There are at least six million handgun transfers per year. How many hours would it take for a policeman run a national criminal records check, and to visit the home of every person who applied? One hour, at the very least. That would be six million police hours spent checking up on honest citizens, instead of looking for criminals. . In the haystack of applications by honest citizens, police will search for a few needles left by the nation's very stupidest criminals. Looking for crime, police officers will be directed into a paperwork enterprise particularly unlikely to lead to criminals. Wouldn't all those millions of police hours be better spent on patrol; on the streets instead of behind a desk?[12]

The asseverations of some police officials that waiting periods have helped them stop large numbers of criminal handgun purchases ought to be taken with a grain of salt. The fact that police officials may deny a handgun permit does not prove that the applicant was a criminal -- more likely, that official was capriciously denying a citizen his Constitutional rights. Nor does the fact that an applicant was rejected for unpaid parking tickets or other petty offenses prove that the applicant was a

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12. The House version of the bill only applies to handgun sales by dealers. It thereby reduces the number of transactions the police have to check down to "only" two and a half million.

If the House version passes, Handgun Control and Mrs. Brady will likely be back in a few years, claiming that exempting private transfers from the law guts its effectiveness.

gun criminal. How many applicants were turned down solely because they were once falsely arrested, even though they were later acquitted at a trial? Of the applicants who actually were turned down because of felony convictions, how many did the police immediately arrest and imprison? Any such applicant who was not arrested had the opportunity to buy an illegal gun on the street.

Evidence and logic indicate that the national waiting period law is useless against crime. So why are some police officials in favor? Some of them simply take a dim view of all citizens' rights, including the right to bear arms. It's hardly a surprise to hear an organization like the International Association of Chiefs of Police testify against citizens' rights. The IACP welcomes into its membership police chiefs from nations where citizens have virtually no rights at all.[13]

A few years ago, when the McClure-Volkmer bill was under consideration, some of these same police chiefs warned that the bill threatened law officers' lives. The bill passed anyway; and, it turns out, letting a Pennsylvania hunter drive to Maine without obtaining a New York gun permit has not endangered anyone.

Some of these same police officials supported Senator Metzenbaum's "plastic gun legislation" as absolutely essential to combat terrorism. (That misnamed legislation actually dealt with

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13. For example, Ethiopia, South Africa, and Iraq.

small conventional guns, rather than all-plastic weapons, which are a decade or more away.) Congress, though, rejected that argument, and enacted Senator McClure's alternative airport security bill, which affects not a single one of the guns that Senator Metzenbaum and his police chiefs had claimed to be so easily usable by terrorists.

In short, the fact that some police officials reflexively oppose the exercise of Constitutional rights is not entitled to much weight in the deliberative process. Congress has repeatedly rejected their unreasoned arguments, and should do so again. (By the way, actual police officers -- as opposed to high-level police officials -- strongly support Second Amendment rights.)[14]

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14. The International Association of Police Unions (AFL/CIO), for example, has testified before Congress against gun control legislation. The President of the American Federation of Police, Dennis Ray Martin, appears in print advertisements as a Second Amendment Foundation spokesman (e.g. Gun Week, April 22, 1988, p. 7).

After Handgun Control Inc. criticized the NRA in an advertisement in Police magazine, the magazine received mail "unrivaled by any subject in the last two years," most of the writers "saying they didn't like the contents of the ad one bit." Police's editor composed an editorial condemning Handgun Control Inc., defending the NRA, and warning that "HCI is trying to erode" the Second Amendment. F. McKeen Thompson, "Readers Respond to HCI . . . And We Agree," Police (The Law Officer's Magazine), vol. 11, no. 12 (December 1987), p. 4.

A 1986 questionnaire sent to every major police official in the country produced the following results: 97 percent believed that a firearms ownership ban would not reduce crime or keep criminals from using guns; 89 percent believed that gun control laws such as those in Chicago, Washington, D.C., and New York City had no effect on criminals; and 90 percent believed that if firearms ownership was banned, ordinary citizens would be more likely to be targets of armed violence. Gerald Arenberg, Do the Police Support Gun Control?, monograph (Bellevue, Wash.: Second Amendment Foundation, n.d.), p. 10. Arenberg is Executive

Another reason that some police chiefs favor this proposal is that police chiefs, like any other administrators of large government offices, often seek to expand their official power. From the perspective of a police administrator (who may never even have served in street patrol) more power means more officers doing administrative tasks. It is the same mentality that leads to the creation of paperwork empires in the Pentagon or in the Hubert H. Humphrey building, even if the emphasis on paperwork hinders the agency's performance of its assigned mission.

SOME PARTICULAR DEFECTS OF THE BILL

Turning the right to bear arms into a police-granted privilege is one flaw of the bill, and its criminogenic effects are another. These problems are obvious enough, but there are more problems revealed when one examines the bill's particulars.

First of all, the bill claims to be just about waiting periods, but it turns out to include de facto gun registration. Applicants must submit not only identification for a background check, but also "an accurate description of the handgun," and "the serial number of the handgun."[15]

The police are theoretically supposed to destroy the statement of an applicant who is not denied permission to buy.

Director of the National Association of Chiefs of Police.

15. Section (3)(A) & (B).

Yet there is nothing in the bill to punish police who keep a photo-copy or a computer entry. (Indeed, the bill only requires that the statement itself be destroyed, not the same information in another form.) Further, no one doing a background check on an applicant needs to know the gun's make or serial number. The only point of those items being required, therefore, must be for later use. Gun registration, incidentally, is itself quite useless in crime-fighting.[16]

At a time when local police resources are already stretched thin, the bill imposes very substantial paperwork and manpower requirements on every police force in the country. The bill claims it is cost-free, because the background check will be optional. But the bill's prime lobbyist, Handgun Control Inc.,

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16. Tracing a crime gun's history generally leads to the discovery that it was lost or was stolen from a legal owner, and its subsequent history is unknowable. J. Howard Matthews, Firearms Identification (Springfield, Ill.: Charles C. Thomas, 1962), pp. 77, 80; Julian Hatcher, Frank Jury, and Joe Weller, Firearms Investigation Identification and Evidence, (Harrisburg, Pa.: Stackpole, 1957), pp. 177, 180, 184.

It is true that we register autos, which are also dangerous instruments. But firearms, unlike cars, are specifically protected by the Constitution. Gun owners, unlike drivers, do not need to leave private property and enter a public roadway. (Cars kept exclusively on private property do not need to be registered.) Most importantly, auto registration has never been used as a technique to reduce private car ownership, or to confiscate private cars. Greece, Ireland, Jamaica, and Bermuda have all used registration lists to round up all private guns. The Evanston, Illinois police department tried to do the same thing, but was blocked by a court.

has already announced that its legal defense fund will sue police departments that do not implement the background check.[17]

In this regard, it is astonishing that witnesses who claim to speak for the nation's police want a law to make police departments everywhere vulnerable to a brand new form of tort litigation.

Police officers and gun dealers will not the be only people burdened by paperwork, for the bill applies even to private gun transfers. Suppose a father wishes to give one of his handguns to his daughter, who lives alone in a dangerous neighborhood where several rapes have occurred recently. The daughter must swear out a written statement, then the father must send the statement, along with photo identification of the daughter (and a description of the identification) in a certified or registered letter (return receipt requested) to the chief of police. After seven days, if the police have not vetoed the sale (and the daughter has not yet been raped or killed), she may receive the gun. The father must keep on file his own copy of the

17. They plan to sue upon the first gun misuse which theoretically could have been stopped by the waiting period. Unfortunately, after police departments begin complying with the paperwork rules, citizens who are victimized by crime will have no right to sue the police chiefs for putting their officers behind a desk, instead of on anti-crime patrol.

daughter's sworn statement for at least a year; if he fails to do so, he is subject to a $500 fine.[18]

Paperwork like this does not uphold the law. Rather, it diminishes respect for the legal system, as citizens are niggled to death with self-evidently silly paperwork requirements.

When citizens deal with the government, the Fifth Amendment guarantees them due process of law. This is true for everything from public library cards to driver's licenses. It is all the more true when Constitutional rights are involved.

Yet the national waiting period bill provides no appeal from police decisions. If a police department denies applicants for specious reasons, or no reason at all, the applicants have no remedy. In Maryland, where an appeals process exists, the police are over-ruled 85% percent of the time, as previous testimony on this bill has revealed.[19]

In this context, one should remember that some American police departments have a proven record of lawless enforcement of the gun laws. The St. Louis police have denied permits to homosexuals, nonvoters, and wives who lack their husband's

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18. Sections (1), (2), & (3). As noted above, the House version of the bill does not cover private transfers such as this.

19. Testimony of Sergeant R.G. Pepersack, Md. St. Police Commander, Firearms Lic. Sect., before Subcomm. on the Const., June 16, 1987.

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permission.[20] Although New Jersey law requires that the authorities act on gun license applications within 30 days, delays of 90 days are routine; some applications are delayed for years, for no valid reason.[21] Mayor Richard Hatcher of Gary, Indiana, ordered his police department never to give anyone license application forms.[22] The Police Department in New York City has refused to issue legally-required licenses, even when twice commanded appeals courts to do so. The Department has also refused to even hand out blank application forms.[23]

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20. Donald B. Kates, "On Reducing Violence or Liberty," Civil Liberties Review, (American Civil Liberties Union) August/September 1976, p. 56.

21. Statement of Robert F. Mackinnon, on behalf of the Coalition of New Jersey Sportsmen, before the House Committee on the Judiciary, on Legislation to Modify the 1968 Gun Control Act, part 2, serial no. 131, 99th Congress, 1st and 2d sess., Feb. 27, 1986 (Washington D.C.: Government Printing Office, 1987), p. 1418.

22. Motley v. Kellogg, 409 N.E.2d 1207 (Ind. App. 1980).

23. For some examples of the New York City Police Department's flagrant abuse of the statutory licensing procedure, see: Shapiro v. Cawley, 46 A.D.2d 633, 634, 360 N.Y.S.2d 7, 8 (1st Dept. 1974) (ordering N.Y.C. Police Department to abandon illegal policy of requiring applicants for on-premises pistol license to demonstrate unique "need"); Turner v. Codd, 85 Misc. 2d 483, 484. 378 N.Y.S.2d 888, 889 (Special Term Part 1, N.Y. County, 1975) (ordering N.Y.C. Police Department to obey Shapiro decision); Echtman v. Codd, no. 4062-76 (N.Y. County) (class action lawsuit which finally forced Police Department to obey Shapiro decision).

Also: Bomer v. Murphy, no. 14606-71 (N.Y. County) (to compel Department to issue blank application forms for target shooting licenses); Klapper v. Codd, 78 Misc.2d 377, 356 N.Y.S.2d 431 (Sup. Ct., Spec. Term, N.Y. Cty.) (overturning refusal to issue license because applicant had changed jobs several times); Castelli v. Cawley, New York Law Journal, March 19, 1974, p. 2, col. 2 (Applicant suffered from post-nasal drip, and repeatedly cleared his throat during interview. His interviewer "diagnosed" a "nervous condition" and rejected the application. An appeals court overturned the decision, noting that the applicant's employment as a diamond cutter indicated "steady nerves."

Finally, the national waiting period is offensive to the Tenth Amendment, and to principles of federalism. Most states, including Senator Metzenbaum's state of Ohio, have rejected waiting period proposals. In the last 15 years not a single state has instituted a waiting period. Indeed, the trend has been against waiting periods, with Florida repealing its waiting periods, and other states enacting pre-emption laws to prevent localities from imposing such laws. There is no compelling federal need to over-ride the decisions of these states. There is no federal need to impose mountains of paperwork on state and local police agencies. That is why President Reagan, who favors waiting periods at the state level, has announced his opposition to the national waiting period proposal.[23.5]

The national waiting period bill will most likely be offered as an amendment to the drug bill, on the Senate floor. The claim that it would have the slightest effect on drug dealers is patently absurd. The claim that the bill would have prevented the assassination attempt on President Reagan is a falsehood. The only evidence for the proposal comes from government administrators who are reflexively hostile to individual rights. Their claims contradict <u>all</u> the academic evidence, and they contradict common sense. As a first step in the destruction of the right to bear arms, the national waiting period is splendid. It is not part of the war on drugs; it is part of the war on the Constitution.

23.5 HCI argues that a uniform law would stop the import of guns from "lax" into "strict" states. But the federal law already regulates machine guns even more strictly, and drug criminals have no trouble obtaining them.

MAKING GUN CONTROL ACT OFFENSES INTO RICO PREDICATE OFFENSES

The other proposal under consideration today is whether violations of the Gun Control Act of 1968 should become RICO predicate offenses.

Making Gun Control Act violations into RICO offenses essentially makes every armed robbery in the U.S. a high-level federal crime. This strikes me as a rather strange re-allocation of criminal justice resources. Are the U.S. attorneys today underworked? Have they done such a thorough job with insider trading, procurement fraud, and civil rights violations that they can now do the work of all the state and local prosecutors who prosecute street crime today?

On its face, the proposal does not violate the Second Amendment, but the bill is in very serious conflict with the Tenth Amendment. Ordinary violent crime has long been exclusively a state matter. This is appropriate, for states and cities best understand local conditions, and can devise the most appropriate anti-crime strategies. Until the federal government has wiped out the crimes it already must prosecute, it seems ill-advised to take on the added task of prosecuting ordinary violent crime.

In the past several years, a law originally aimed at racketeering has now become a law about everything, and may therefore degenerate into a law about nothing. When banks involved in a commercial dispute file RICO charges against each

other, when a mom and pop video store that rents out adult movies is charged under RICO, the statute's effectiveness is diluted. Adding ordinary violent crime to RICO's already overbroad compass may stretch the statute so thin that its utility against organized crime is diminished. RICO used to command the attention of prosecutors, judges, and juries, for RICO was shorthand for "organized crime prosecution." Soon, RICO may come to mean just "felony." Does it really make sense to label a punk who robs old ladies a "racketeering enterprise."

Frankly, I do not believe that the bill's proponents really intend that it be used against ordinary street crime. Rather, the bill amounts to a back-door repeal of the Firearm Owners' Protection Act. This bill gives the Bureau of Alcohol, Tobacco, and Firearms new authority with which to harass non-criminal gun-owners.

For many years BATF spent much of its time pulling the so-called "straw man" entrapment game. Agents posing as fake buyers would trick gun collectors and small-scale dealers into technical violations. According to this subcommittee:

> [A]pproximately 75 percent of BATF gun prosecutions were aimed at ordinary citizens who had neither criminal intent nor knowledge, but were enticed by agents into unknowing technical violations.[24]

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24. Subcommittee on the Constitution, The Right to Keep and Bear Arms, supra note 1, pp. 20-23.

The Firearm Owners Protection Act took BATF out of this dirty business. The RICO gun bill lets BATF back in. Gun collectors tricked by BATF would now be "gun racketeers operating a criminal enterprise." Further, BATF could invoke civil forfeiture, even after an acquittal to confiscate the collections of these small-scale dealers.

From a civil liberties or due process point of view, the last agency that deserves any additional discretionary power is BATF. Consider some of their recent prosecutions. U.S. law prohibits the possession of unregistered fully automatic weapons (one continuous trigger squeeze causes repeat fire). Semiautomatic weapons (which eject the spent shell and load the next cartridge, but require another trigger squeeze to fire) are legal. If the sear (the catch that holds the hammer at cock) on a semiautomatic rifle wears out, the rifle may malfunction and repeat fire. The BATF has arrested and prosecuted a small town Tennessee police chief for possession of an automatic weapon (actually a semiautomatic with a worn-out sear), even though the BATF conceded that the police chief had not deliberately altered the weapon.

This spring, BATF pressed similar charges for a worn-out sear against a Pennsylvania state police sergeant. After a 12-day trial, the federal district judge directed a verdict of not

guilty and called the prosecution "a severe miscarriage of justice."[25]

To convict on a RICO offense, a prosecutor need not prove that the defendant "willfully" violated the law. It is no surprise that opponents of gun ownership want to find a way to reduce the BATF's burden of proof in its war against legitimate gun owners.

As drug hysteria sweeps through Congress, anti-gun organizations hope to create their own wave of drug and gun hysteria. Before adopting the proposals of the hard-core opponents of the Second Amendment, Congress should have its own "cooling-off period." In that period, Congress can evaluate the real evidence about these proposals. When cool-headed reason prevails, Congress will again reject a passionate but illogical lobby's assault on the American Constitution.

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25. United States v. Corcoran, Crim. no 88-11 (W.D. Pa., April 6, 1988)(Ziegler, J.).

Senator METZENBAUM. Mr. Stephen Halbrook, attorney and Ph.D. of Fairfax, Virginia. We are happy to have you with us, Mr. Halbrook.

STATEMENT OF STEPHEN P. HALBROOK

Mr. HALBROOK. Thank you, Mr. Chairman. It is a pleasure to be here.

I am the author of numerous Law Review articles and a book on the second amendment to the U.S. Constitution. I am somewhat disturbed that there has been no mention of the right of the people to keep and bear arms as a subject by the proponents of this legislation.

None of the witnesses who were in support of the bill were persons who are knowledgeable in that area, and they were only police witnesses. I can imagine this situation for a waiting period on the right to counsel or a waiting period on the right to privacy, in parading a number of police officials as being the only ones to testify on a bill, on the constitutionality of a bill, that would infringe on or require a waiting period for exercise of any constitutional right.

As we begin to celebrate the bicentennial, the second hundred year of the Bill of Rights, I think it is also disturbing that the mere mention of the word "drug trafficking" is being used to justify an infringement on any and all constitutional rights.

S. 466 would require a seven day waiting period before one could exercise the constitutional right to keep and bear arms and protect life. It requires that police be notified with the names and addresses of American citizens who would exercise the rights guaranteed by the second amendment. A person who requires access to a handgun because of a threat to life would be exempt only if he or she could convince the local law enforcement officer to give him or her a certificate.

The law enforcement officer may arbitrarily refuse to issue a certificate to or even to meet with the person who received death threats. No sanctions exist to require law enforcement officers to destroy personal information about applicants.

The officer would have sole discretion to determine whether receipt or possession of a handgun would violate Federal law or state or local law. He becomes a judge without benefit of briefing and argument of counsel. There is no right of appeal from the decision of the law enforcement officer. There is no opportunity for notice or hearing. In short, there is basically no procedural due process provided in this bill.

This legislation is a massive surveillance system in which those who exercise constitutional rights are subjected to police scrutiny. The Bill of Rights freedoms are priceless rights, the suspension of which for a week is irreparable harm and not a mere slight inconvenience. The proposed bill is no different than to require a waiting period and police background check to exercise the right of free speech, press, assembly and petition under the guise that subversion, riots, and criminal conspiracies will be stamped out. It recalls laws which require that membership lists of controversial groups be turned in to authorities.

S. 466 creates a presumption that each and every American citizen is a convicted felon. It would impose a chilling effect and prior restraint on exercise of constitutional rights. Requiring a citizen to wait a week to purchase a handgun, pending police approval, is no different than prohibiting a citizen from publishing an article or buying a newspaper or joining a labor union for a week, so that police may review the proposed exercise of a constitutional right. By the same logic, police could conduct warrantless searches and seizures of our persons and houses for a week.

The Supreme Court has recently denied that some bill of rights freedoms "are, in some way, less 'fundamental' than others. Each establishes a norm of conduct which the Federal Government is bound to honor to no greater or lesser extent than any other inscribed in the Constitution. Moreover, we know of no principal basis on which to create a hierarchy of constitutional values."

The Supreme Court has also indicated that it would invalidate any statutes that would have offended the framers on constitutional grounds, particularly prior restraints. I would invite the subcommittee to review the history of the adoption of the second amendment, which clearly indicates an individual right to keep and bear arms, and therefore to purchase arms as well.

On the emergency provision, as a practical matter, there is not even time to get an appointment with the chief law enforcement officer. Many law enforcement officers refuse to recognize the right of ordinary citizens to have arms. In some cases, it has taken years of protracted litigation—I have been involved in some of those cases—to require such officers to issue firearms permits to which citizens are entitled.

A waiting period with routine police scrutiny violates the rights to life, to have arms, and to privacy. S. 466 is precisely the kind of infringement the Bill of Rights was adopted to prevent.

[The prepared statement of Stephen P. Halbrook follows:]

PRIOR RESTRAINT, POLICE SURVEILLANCE, AND THE PURCHASE OF CONSTITUTIONALLY PROTECTED ARMS:

TESTIMONY ON S. 466

by

Stephen P. Halbrook, Ph.D., J.D.*

Subcommittee on the Constitution

Senate Committee on the Judiciary

August 2, 1988

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S. 466 would require a seven day waiting period before one may exercise the constitutional rights to keep and bear arms and to protect life. It requires that police be notified of the names and other personal information of American citizens who would exercise the rights guaranteed by the Second Amendment. A person who "requires access to a handgun because of a threat to the life" of such person would be exempt from the waiting period only if such person could convince the chief law enforcement officer of his place of residence to give him a certificate.

The law enforcement officer may arbitrarily refuse to issue a certificate to a person who received death threats, for S. 466 provides that "nothing in this subsection shall be interpreted to require any action by a chief law enforcement officer which is not otherwise required." Moreover, no sanctions exist to require law enforcement officers to destroy within 60 days personal information about applicants. This information includes everything necessary to set up a firearm registration system: description and serial number of the handgun, and name, address, and birthdate of the transferee. The local chief law enforcement officer would have sole discretion to determine whether receipt or possession of the handgun would violate federal law or the state or local law of

the residence of the transferee. No provision is made for transferees with dual residences.

This legislation is a massive surveillance system in which those who exercise constitutional rights are subjected to police scrutiny. Neighbors, friends, and collectors could not trade handguns without informing the police first. Bill of rights freedoms are priceless rights, suspension of which for a week is irreparable harm and not a "slight inconvenience." The proposed bill is no different than requiring a waiting period and police background checks to exercise the rights of free speech and press, assembly, and petition, under the guise that subversion, riots, and criminal conspiracies will be stamped out. They recall laws which required that membership lists of controversial groups be turned in to authorities, in order that the right of association not lead to Communist infiltration.

S. 466 creates a presumption that each and every American citizen is a convicted felon, narcotics addict, or other prohibited person. It would impose a chilling effect and prior restraint on exercise of constitutional rights, with the police acting as the board of censors. Requiring a citizen to wait a week to purchase a handgun pending police approval is no different than prohibiting the citizen from publishing an article in or buying a newspaper or joining a labor union for a

week, so that censors and political police may review the proposed exercise of a constitutional right. By the same logic, the police could conduct warrantless searches and seizures of our persons and houses for a week, and arrest all persons in possession of incriminating evidence.

The police are no more entitled to know what firearms are possessed by citizens than they are entitled to know what books citizens read. Proponents may as well argue that it would be only a "slight inconvenience" to allow police to conduct routine wiretaps and searches of persons, autos, and homes, in order that would-be criminals are detected.

The Supreme Court has recently denied that some Bill of Rights freedoms "are in some way less 'fundamental' than" others. "Each establishes a norm of conduct which the Federal Government is bound to honor - to no greater or lesser extent than any other inscribed in the Constitution. Moreover, we know of no principled basis on which to create a hierarchy of constitutional values . . . ."[1] The proposed waiting period, to quote an earlier opinion, "appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten amendments . . . ."[2] Misuse of the press or of arms may be punished, but Congress may pass no law restraining exercise of these rights. After quoting the First Amendment,

the Court has referred to "the equally unqualified command of the Second Amendment: 'the right of the people to keep and bear arms shall not be infringed.'"[3] Moreover, these arms include pistols and revolvers as well as rifles and shotguns, just as pamphlets and leaflets are just as protected as newspapers and periodicals.[4]

The Supreme Court has stated: "But when we do have evidence that a particular law would have offended the Framers, we have not hesitated to invalidate it on that ground alone. Prior restraints, for instance, clearly strike to the core of the Framers' concerns, leading this Court to treat them as particularly suspect."[5] There can be no doubt how the Framers of the Bill of Rights would have regarded waiting periods for exercise of and routine police surveillance of constitutional rights.

Second Amendment rights were enumerated because the Framers recalled how the British sought to deprive the colonists of their private arms. Just as the British troops were about to begin the occupation of Boston in 1768, a patriot (possibly Samuel Adams) wrote:

> It is reported that the Governor has said, that he has Three Things in Command from the Ministry, more grevious to the People, than any Thing hitherto made known. It is conjectured 1st, that the Inhabitants of this Province are to be disarmed. 2d. The Province to be governed by Martial Law. And 3d,

> that a Number of Gentlemen who have exerted themselves in the Cause of their Country, are to be seized and sent to Great-Britain.
>
> Unhappy America! When thy Enemies are rewarded with Honors and Riches; but thy Friends punished and ruined only for asserting thy Rights, and pleading for they Freedom.[6]

The military occupation occurred after the citizens of Boston voted in a town meeting to require all citizens to obtain arms. Samual Adams defended the right to keep arms in a 1769 article as follows:

> At the revolution [of 1689], the British constitution was again restor'd to its original principles, declared in the bill of rights; which was afterwards pass'd into a law, and stands as a bulwark to the natural rights of subjects. "To vindicate these rights, says Mr. Blackstone, when actually violated or attack'd, the subjects of England are entitled first to the regular administration and free course of justice in the courts of law--next to the right of petitioning the King and parliament for redress of grievances--and lastly, to the right of having and using arms for self-preservation and defence." These he calls "auxiliary subordinate rights, which serve principally as barriers to protect and maintain inviolate the three great and primary rights of personal security, personal liberty and private property": And that of having arms for their defense he tells us is "a public allowance, under due restrictions, of the natural right of resistance and self preservation, when the sanctions of society and laws are found insufficient to restrain the violence of oppression."--How little do those persons attend to the rights of the constitution, if they know anything about them, who find fault with a late vote of this town, calling upon the inhabitants to provide themselves with arms for their defence at any time; but more especially, when they had reason to fear, here would be a necessity of the means of self eservation against the violence of oppression.[7]

Between 1768 and 1775, the British resorted to every possible measure to deprive the Americans of arms. Similar to the current proposed bills which seek to interfere with the acquisition of firearms, the British imposed an embargo on shipments of arms and ammunition to the American colonies. Edmund Burke pointed out in debates in Parliament in 1775 that such injustices had been tried before on Wales:

> Sir, during that state of things, parliament was not idle. They attempted to subdue the fierce spirit of the Welsh by all sorts of rigorous laws. They prohibibited by statute the sending all sorts of arms into Wales, as you prohibit by proclamation (with something more of doubt on the legality) the sending arms to America. They disarmed the Welsh by statute, as you attempted, (but still with more question on the legality) to disarm New England by an instruction. They made an Act to drag offenders from Wales into England for trial, as you have done[8] (but with more hardship) with regard to America.

The Declaration of Causes of Taking Up Arms of 1775 complained that General Gage tricked the citizens of Boston into surrendering their arms (allegedly for temporary "safekeeping") with their own magistrates, and then had his Redcoats seize the arms, which included muskets, pistols, and blunderbusses.[9] Gage's disarming of the people of Boston was widely reported in colonial newspapers and clarified for all patriots Gage's tyrannical designs. For instance, the Pennsylvania Evening Post reported that "the Governor and

gentlemen of Boston have agreed to open the town, on condition of the inhabitants delivering up their arms to the Selectmen."[10] A patriot wrote from Roxbury: "Gage and his troops are immured within the walls of Boston; and . . . our friends are entrapped by them:--We have some hope they will be liberated this day; Gen. Gage has proposed, upon their surrendering their arms, that they may march out; they surrendered their arms yesterday."[11]

After collecting their arms, Gage refused to allow the people to leave Boston. It was reported from New London: "By the post, who left the head quarters at Roxbury, last Monday o'clock P.M. we learn that only two persons have been permitted to come out of Boston that day, that no more of the inhabitants would be permitted to leave the town for the present; and that on the same day a town meeting was to be held in Boston, when the inhabitants were determined to demand the arms they had deposited in the hands of the Selectmen, or have liberty to leave the town."[12]

Meanwhile British troops began plundering houses in Boston,[13] and Gage proclaimed martial law, ordering the rebels to lay down their arms.[14] The following is a typical patriot's response:

> What terms do you hold out in this gracious proclamation? . . . Now, Sir, waving all that may be said of your hypocrisy, cruelty, villanry, treachery,

> perfidy, falsehood, and inconsistency, are you not ashamed to throw out such an insult upon human understanding, as to bid people disarm themselves till you and your butchers murder and plunder them at pleasure! We well know you have orders to disarm us, and what the disposition of the framers of these orders is, if we may judge from the past, can be no secret.[15]

Can there be any doubt how the Framers would have reacted to a law that Americans may not purchase firearms until the authorities approve such purchase? The same newspapers which carried the above reports routinely advertised firearms for sale and made no secret that they would be used to resist oppression.[16] One of the objectives of the right to keep and bear arms as envisioned by the Framers is to hold the rulers in check--including the authorities who would decide whether firearms may be purchased under the proposed legislation.

In 1777, William Knox, Undersecretary of State in the British Colonial Office, circulated a proposal entitled "What is Fit to be Done with America?" Besides a ruling aristocracy loyal to the Crown, establishment of the Church of England, and an unlimited power to tax, Knox offered the panecea of disarming all of the people:

> The Militia Laws should be repealed & none suffered to be re-enacted, & the Arms of all the People should be taken away, & every piece of Ordnance removed into the King's Stores, nor should any Foundery or manufactuary of Arms, Gunpowder, or Warlike Stores, be ever suffered in America, nor should any Gunpowder, Lead, Arms or Ordnance be imported into it

> without Licence; they will have but little need of such things for the future, as the King's Troops, Ships & Forts will be sufficient to protect them from any danger.[17]

When the Constitution was proposed in 1787 without a Bill of Rights, the federalists argued that one was unnecessary, since Congress had no enumerated power to control rights such as a free press and bearing arms. Recalling British abuses, the antifederalists demanded written guarantees. Advocates of a bill of rights opposed any requirement that persons who exercise basic freedoms must first notify the authorities. For instance, one such proponent noted: "The project of muffling the press, which was publicly vindicated in this town [Boston], so far as to compel the writers against the government, to leave their names for publication, cannot be too warmly condemned."[18] Richard Henry Lee wrote that "to preserve liberty, it is essential that the whole body of the people always possess arms, and be taught alike, especially when young, how to use them . . . ."[19] The Supreme Court recently noted:

> The remarks of Richard Henry Lee are typical of the rejoinders of the Antifederalists. . . . The concerns voiced by the Antifederalists led to the adoption of the Bill of Rights. . . .
>
> The fears of the Antifederalists were well founded.[20]

When James Madison proposed the Bill of Rights in 1789, he wrote that the proposed amendments concerning the press and

arms "relate first to private rights . . . ."[21] Ten days after its introduction, federalist leader Tench Coxe wrote of what became the Second Amendment: "As civil rulers, not having their duty to the people duly before them, may attempt to tyrannize, and as the military forces which must be occasionally raised to defend our country, might pervert their power to the injury of their fellow-citizens, the people are confirmed by the next article in their right to keep and bear their private arms."[22] Madison endorsed Coxe's analysis, which was widely reprinted without contradiction.[23]

St. George Tucker, the first major commentator on the Constitution, wrote: "The right of self-defense is the first law of nature . . . . Wherever . . . the right of the people to keep and bear arms is, under any color or pretext whatsoever, prohibited, liberty, if not already annihilated, is on the brink of destruction."[24]

In the Dred Scott decision, the Supreme Court conceded that if African Americans were citizens, they would be "entitled to the privileges and immunities of citizens" and would be exempt from the special "police regulations" applicable to them. "It would give to persons of the negro race, who were recognized as citizens in any one State of the Union, the right to enter every other State whenever they pleased, singly or in companies. . .; and it would give them the full liberty of speech . . .; to hold public meetings upon

political affairs, and to keep and carry arms wherever they went."[25]

During Reconstruction, the Court stated that the rights of the people "peaceably to assemble for lawful purposes" and "of bearing arms for a lawful purpose" were not "granted" by the Constitution because they existed long before its adoption.[26] The amendments which recognize these rights serve to "restrict the powers of the national government . . . ."[27] A later opinion again recognized "the right of the people to keep and bear arms" and repeated that the Second Amendment is a limitation "upon the power of Congress and the National government . . . ."[28]

At the turn of the century, the Court wrote of "the freedom of speech and of the press" and "the right of the people to keep and bear arms" that "the law is perfectly well settled that the first ten Amendments to the constitution, commonly known as the Bill of Rights, were not intended to lay down any novel principles of government, but simply to embody certain guaranties and immunities which we inherited from our English ancestors . . . ."[29] And in 1939, the Court held that the Second Amendment protects private possession of a weapon which "is any part of the ordinary military equipment or that its use could contribute to the common defense."[30]

Historically defined, "the Militia comprised all males physically capable of acting in concert for the common defense" and "these men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time."[31]

Inherent in the right to keep and bear arms is the right to purchase arms. "The right to keep arms necessarily involves the right to purchase them, to keep them in a state of efficiency for use, and to purchase and provide ammunition suitable for such arms, and to keep them in repair."[32] The Second Amendment has recently been held to confirm that handguns are not unreasonably dangerous when marketed to the general public.[33] Being a penumbra of a fundamental, constitutional right, the right to purchase handguns cannot be infringed by waiting periods and police surveillance.

The proposed legislation will endanger legitimate self-defense because an emergency may occur during the waiting period. There may not be time, as S. 466 contemplates, to obtain a law enforcement certificate that the potential victim requires access to a handgun because of threats to his or her life. Indeed, the average citizen may not even be able to get an appointment to see the chief law enforcement officer. A similar law restricting pistols was held unconstitutional because it "would place law-abiding citizens entirely at the

mercy of the lawless element. . . . For all practical purposes it is prohibition of the constitutional right to bear arms. There would be no time or opportunity to get such permit . . . ."[34]

Even if there is time to get the law enforcement certificate showing imminent danger to life, many chief law enforcement officers refuse to recognize the right of ordinary citizens in danger to have arms. In some cases, it has taken years of protracted litigation to require such officers to issue firearms permits to which citizens are entitled.[35] The Indiana Court of Appeals has explained the problem as follows:

> We think it clear that our constitution provides our citizenry the right to bear arms for their self defense . . . .
>
> In Schubert's case it is clear from the record that the superintendent decided the application on the basis that the statutory reference to "a proper reason" vested in him the power and duty to subjectively evaluate an assignment of "self-defense" as a reason for desiring a license and the ability to grant or deny the license upon the basis of whether the applicant "needed" to defend himself.
>
> Such an approach contravenes the essential nature of the constitutional guarantee. It would supplant a right with a mere administrative privilege which might be withheld simply on the basis that such matters as the use of firearms are better left to the organized military and police forces even where defense of the individual citizen is involved.[36]

The court went on to find the ordinary citzen's interest in self-defense to be a proper reason for issuance of the license, and rejected the following "Catch-22":

> Any ordinary citizen applying for a license could be "factually" denied a permit because no one had actually threatened him. Thus, he would have no "need" to defend himself. Similarly, if threatened, the permit could be denied on the basis that the official police agencies were capable of handling the matter so that he had no "need" to defend himself.[37]

By contrast, in some states the courts have upheld police denials of firearms permits under the dogma that handguns can never be effectively used by private citizens for self-defense. Physicians who carried narcotics in their bags in high crime areas at night were not entitled to permits because, the New Jersey Supreme Court alleged, "their possession of handguns in the streets would . . . furnish hardly any measure of self-protection . . . ."[38] Massachusetts' highest court affirmed the one year mandatory prison sentence of a person who was repeatedly assaulted with a knife, complained to and sought protection from police to no avail, and was forced to carry a firearm, even though "it is possible that the defendant is alive today only because he carried the gun that day for protection."[39]

It is well established that "official police personnel and the government employing them are not generally liable to victims of criminal acts for failure to provide adequate police protection . . . ."[40] "There is no constitutional right to be protected by the state against being murdered by criminals or

madmen."[41] Public officials have been held not liable for negligent failure to issue firearms permits even where the person disarmed thereby is murdered.[42]

Not only will the provision for emergency certifications be nullified by police officials who are unwilling to recognize citizens' rights, but many handgun transactions will be defeated altogether by the existence of invalid local ordinances. The courts have repeatedly declared void local ordinances which conflict with and are preempted by state law on handgun sales.[43] Many of these ordinances remain on the books and are enforced despite repeated attorney general opinions that they are illegal.[44]

It is well established that "the right to defend oneself from a deadly attack is fundamental."[45] In declaring a handgun ordinance invalid as an interference with the rights to bear arms and to self defense, one court stated: "Even though the governmental purpose may be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved."[46] Another court has stated concerning the right to keep rifles and pistols: "The State can take no action which will unnecessarily 'chill' or penalize the assertion of a constitutional right and the State may not draw adverse inferences from the exercise of a constitutional

right."[47]

A waiting period with routine police scrutiny violates the rights to life, to have arms, and to privacy. Wholly aside from these infringements, the proposed legislation is not based on any known constitutional power and contradicts the constitutional scheme of federalism. It seeks to criminalize private transactions in firearms which are wholly unrelated to interstate commerce. It would impose overreaching federal burdens on legitimate activities, despite the fact that the overwhelming majority of states have rejected such laws. S. 466 is precisely the kind of infringement that the Bill of Rights was adopted to prevent.

NOTES

1. Valley Forge College v. Americans United, 454 U.S. 464, 484 (1982).

2. United States v. Carolene Products Co., 304 U.S. 144, 152 n.4 (1938).

3. Koingsberg v. State Bar of California, 366 U.S. 36, 49 n.10 (1961).

4. Lovell v. Griffin, 303 U.S. 444, 452 (1938) states:

> The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphelts and leaflets. These indeed have been historic weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our own history abundantly attest. The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion.

As the experience of the Revolution attests, pistols, rifles, and shotguns have also been "historic weapons in the defense of liberty," to use the above language. Moreover, "'pistol' ex vi termini is properly included within the word 'arms,' and that the right to bear such arms cannot be infringed. The historical use of pistols as 'arms' of offence and defense is beyond controversy." State v. Kerner, 181 N.C. 574, 107 S.E. 222, 224 (1921).

5. Minneapolis Star v. Minnesota Comm. of Rev., 460 U.S. 575, 583 n.6 (1983).

6. See S. Halbrook, THAT EVERY MAN BE ARMED: THE EVOLUTION OF A CONSTITUTIONAL RIGHT 59-60 (1984).

7. Pennsylvania Evening Post (Philadelphia), May 2, 1775, at 2, col. 2.

8. Id., May 9, 1775, at 3, col. 2. The same writer noted that at Lexington British regulars were defeated "by a handful of raw, undisciplined peasants."

9. Id., May 20, 1775, at 3, cols. 1-2.

10. Id., May 25, 1775, at 2, col. 1.

11. Id. June 24, 1775, at 2.

12. E. Ludlow, "To the Vilest Tool of the most profligate and tyrannical Administration that ever disgraced a Court. Inhuman Butcher!" Id., June 27, 1775, at 1, cols. 1-2.

A further editorial on Gage's proclamation stresses that an armed populace must keep government in check. "A Freeman," id. at 2, cols. 1-2 states:

> The opposing an arbitrary measure, or resisting an illegal force, is no more rebellion than to refuse obedience to a highway-man who demands your purse, or to fight a wild beast, that came to devour you. It is morally lawful, in all limited governments, to resist that force that wants political power, from the petty constable to the king. . . . They are rebels who arm against the constitution, not they who defend it by arms.

13. E.g., id., May 16, 1775, at 4, col. 2 includes the humorous advertisement: "A large quantity of Rifles for setting an edge to scythes . . . the great increasing Demand sufficiently proves them to be better and cheaper than any Stones . . . ."

14. "The Scheme of Amendments," Independant Gazetter, March 23, 1789, at 2, col. 1.

15. R. Lee, ADDITIONAL LETTERS FROM THE FEDERAL FARMER 170 (1788).

16. Minneapolis Star v. Minnesota Com. of Rev., 460 U.S. 575, 584 (1983).

17. 12 MADISON PAPERS 193-194 (Rutland ed. 1979).

18. "Remarks on the First Part of the Amendments to the Federal Constitution," Federal Gazette, June 18, 1789, at 2, col. 1.

19. See S. Halbrook, supra note 6, at 76-77.

20. 1 Tucker, BLACKSTONE'S COMMENTARIES (Appendix) 300 (1803). Henry St. George Tucker, another major commentator,

wrote that "the right of bearing arms" was one of the "protections or barriers [which] have been erected which serve to maintain inviolate the three primary rights of personal security, personal liberty, and private property." 1 Tucker, COMMENTARIES ON THE LAWS OF VIRGINIA 43 (1831).

21. Scott v. Sanford, 60 U.S. (19 How.) 393, 417 (1857). "Nor can Congress deny the people the right to keep and bear arms, nor the right to trial by jury, nor compel anyone to be a witness against himself in a criminal proceeding." Id. at 450.

22. United States v. Cruikshank, 92 U.S. 542, 551, 553 (1876).

23. Id. at 553.

24. Presser v. Illinois, 116 U.S. 252, 265 (1886). Miller v. Texas, 153 U.S. 535, 538 (1894) repeats that "the restrictions of" the Second and Fourth Amendments operate "upon the Federal power."

25. Robertson v. Baldwin, 165 U.S. 275, 281-282 (1897).

26. United States v. Miller, 307 U.S. 174, 178 (1939).

27. Id. at 179.

28. Andrews v. State, 3 Heisk. (Tenn.) 165, 8 Am. Reports 8, 13 (1871) (citing Second Amendment and state guarantee).

29. Rhodes v. R.G. Industries, 173 Ga. App. 51, 325 S.E.2d 465, 466-67 (1985) states:

> Appellant first contends that "the trial court erred in holding as a matter of law that handguns are exempt from Georgia's product liability law because the lack of safety connected with such weapons raises a political, nonjusticiable question." Her last contention is that the trial court erroneously held as a matter of law that the R.G. revolver is not unreasonably dangerous when marketed to the general public. We disagree on both points. The Second Amendment to the U.S. Constitution guarantees the right of the people to keep and bear arms, as does Art. I, sec. I, Par. VIII of the Georgia Constitution

1983, which states that that right "shall not be infringed, but the General Assembly shall have the power to prescribe the manner in which arms may be borne."

Accord, Martin v. Harrington and Richardson, 743 F.2d 1200, 1204 (7th Cir. 1984) ("the right of private citizens in Illinois to bear arms is protected"). See S. Halbrook, Tort Liability for the Manufacuture, Sale, and Ownership of Handguns? 6 HAMLINE L. REV. 351, 364-379 (1983).

30. State v. Kerner, 181 N.C. 574, 579, 107 S.E. 222, 225 (1921).

31. See Motley v. Kellogg, 409 N.E.2d 1207, 1210 (Ind. App. 1980) (police chief "denied members of the community the opportunity to obtain a gun permit and bear arms for their self-defense."); Buffa v. Police Dept. of Suffolk County, 47 A.D.2d 841, 366 N.Y.S.2d 162 (1975) ("withdrawal of police approval" insufficent reason); Storace v. Mariano, 35 Conn. Sup. 28, 391 A.2d 1347, 1349 (1978) ("in my opinion, he is an unsuitable person to carry a gun" insufficient reason); Salute v. Pitchess, 61 Cal.App.3d 557, 132 Cal.Rptr. 345, 347 (1976) (sheriff may not determine in advance "that only selected public officials can show good cause" for permit); Schwanda v. Bonney, 418 A.2d 163, 165 (Ma. 1980) (criteria not mandated by state statute may not be imposed); Iley v. Harris, 345 So.2d 336, 337 (Fla. 1977) (permit must be based on criteria, not discretion).

32. Schubert v. DeBard, 398 N.E.2d 1339, 1341 (Ind.App. 1980).

33. Id. at 1341 n.5.

34. Reilly v. State, 59 N.J. 559, 284 A.2d 541, 542 (1971).

35. Commonwealth v. Lindsay, 396 Mass. 840, 489 N.E.2d 666, 669 (1986).

36. Warren v. District of Columbia, 444 A.2d 1, 8 (1981).

37. Bowers v. DeVito, 686 F.2d 616, 618 (7th Cir. 1982).

38. Nunn v. State, 35 Cal.3d 616, 200 Cal.Rptr. 440, 677 P.2d 846 (1984).

39. E.g., Doe v. San Francisco, 186 Ca. Rptr. 380, 136 Cal.App.3d 509 (1983) (ordinance prohibited any further handgun sales); Dwyer v. Farrell, 193 Conn. 7, 475 A.2d 257 (1984).

40. E.g.s, 1982-1983 Report of the Attorney General (Virginia) at 755 (1983); 1981-1982 Report of the Attorney General (Virginia) at 112 (1982).

41. United States v. Panter, 688 F.2d 268, 271 (5th Cir. 1982).

42. City of Lakewood v. Pillow, 180 Colo. 20, 501 P.2d 744, 745 (1972).

43. State v. Rupe, 101 Wash.2d 664, 683 P.2d 571 (1984).

Senator METZENBAUM. Thank you very much, Mr. Halbrook. Mr. Halbrook, I notice you are a practicing attorney. Are you practicing in Fairfax, Virginia?

Mr. HALBROOK. Yes, I am, Mr. Chairman.

Senator METZENBAUM. Have you ever successfully or unsuccessfully challenged the state waiting period law in the courts?

Mr. HALBROOK. In Virginia, we do not have a waiting period law, but I can give you an example of how the problem of police mistakes figures in that.

Senator METZENBAUM. That is not what I was asking. I wanted to know whether you or anyone else you know has successfully challenged a state waiting period law?

Mr. HALBROOK. To my knowledge, there have been no state waiting period laws that have been challenged.

Senator METZENBAUM. Thank you very much, Mr. Halbrook, Mr. Kopel, Mr. Baker.

The hearing stands adjourned.

[Whereupon, at 11:56 a.m., the hearing was adjourned.]

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